

EXHIBIT N

<p>1</p> <p>2 THE UNITED STATES DISTRICT COURT</p> <p>3 SOUTHERN DISTRICT OF NEW YORK</p> <p>4 MARJORIE PHILLIPS,-----X</p> <p>5 Plaintiff,</p> <p>6</p> <p>7 -against- Civil Action No.: 17-cv-00221 (GBD)</p> <p>8</p> <p>9 THE FASHION INSTITUTE OF TECHNOLOGY, MARY DAVIS, and MARILYN BARTON,</p> <p>10</p> <p>11 Defendants.-----X</p> <p>12 DATE: December 16, 2021</p> <p>13 TIME: 10:12 a.m.</p> <p>14</p> <p>15</p> <p>16</p> <p>17 DEPOSITION of the</p> <p>18 30(b) (6) Witness, DELIWE KEKANA, by the</p> <p>19 Plaintiff, pursuant to a Notice, held via</p> <p>20 Video Conferencing, before Lesley Simpson, a</p> <p>21 Notary Public of the State of New York.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>3</p> <p>1</p> <p>2 A L S O P R E S E N T:</p> <p>3 MARJORIE PHILLIPS, Plaintiff</p> <p>4 MARY DAVIS, Defendant</p> <p>5 ANDRE THOMAS, Exhibit Manager PFP Reporting</p> <p>6 CRYSTAL ESPINAL, Exhibit Manager PFP Reporting</p> <p>7</p> <p>8 * * *</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>2</p> <p>1</p> <p>2 A P P E A R A N C E S:</p> <p>3</p> <p>4 THE COCHRAN FIRM, P.C. Attorneys for Plaintiff One Exchange Place, 23rd Floor New York, New York 10006</p> <p>5</p> <p>6 BY: DEREK S. SELLS, ESQ. MINA MALIK, ESQ. MONIQUE MILNER, ESQ.</p> <p>7</p> <p>8</p> <p>9 NIXON PEABODY LLP Attorneys for Defendant THE FASHION INSTITUTE OF TECHNOLOGY 50 Jericho Quadrangle Suite 300 Jericho, New York 11753</p> <p>10</p> <p>11</p> <p>12 BY: NICHOLAS MELITO, ESQ. ROSE NANKERVIS, ESQ.</p> <p>13</p> <p>14</p> <p>15 SARETSKY KATZ & DRANOFF LLP Attorneys for Defendant MARY DAVIS 475 Park Avenue South New York, New York 10016</p> <p>16</p> <p>17</p> <p>18 BY: ERIC DRANOFF, ESQ.</p> <p>19</p> <p>20 BERANBAUM MENKEN LLP Attorneys for Defendant MARILYN BARTON 80 Pine Street 33rd Floor New York, New York 10005</p> <p>21</p> <p>22</p> <p>23</p> <p>24 BY: BRUCE MENKEN, ESQ.</p> <p>25</p>	<p>4</p> <p>1</p> <p>2 F E D E R A L S T I P U L A T I O N S</p> <p>3</p> <p>4 IT IS HEREBY STIPULATED AND AGREED by and</p> <p>5 between the counsel for the respective parties</p> <p>6 herein that the sealing, filing and</p> <p>7 certification of the within deposition be</p> <p>8 waived; that the original of the deposition</p> <p>9 may be signed and sworn to by the witness</p> <p>10 before anyone authorized to administer an</p> <p>11 oath, with the same effect as if signed before</p> <p>12 a Judge of the Court; that an unsigned copy of</p> <p>13 the deposition may be used with the same force</p> <p>14 and effect as if signed by the witness, 30</p> <p>15 days after service of the original & 1 copy of</p> <p>16 same upon counsel for the witness.</p> <p>17</p> <p>18 IT IS FURTHER STIPULATED AND AGREED that</p> <p>19 all objections except as to form, are reserved</p> <p>20 to the time of trial.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p>5</p> <p>1</p> <p>2 DELIWE K E K A N A, having been first</p> <p>3 duly sworn before a Notary Public of the State</p> <p>4 of New York was sworn and testified as</p> <p>5 follows:</p> <p>6 EXAMINATION BY</p> <p>7 MR. SELLS:</p> <p>8 Q. Can you please state your name and</p> <p>9 address for the record.</p> <p>10 A. Deliwe Kekana. 38 Pershing Avenue,</p> <p>11 Valley Stream, New York 11581.</p> <p>12 Q. Would that be a private house or an</p> <p>13 apartment?</p> <p>14 A. That's a private home.</p> <p>15 Q. And can you please spell "Pershing"</p> <p>16 for me?</p> <p>17 A. Certainly. It is P, as in Paul,</p> <p>18 E-R-S, as in Sam, H-I-N-G.</p> <p>19 MR. SELLS: Eric, you had a</p> <p>20 question that I am responding to now.</p> <p>21 This deposition will be held with the</p> <p>22 federal stips; if that is okay with</p> <p>23 everyone?</p> <p>24 MR. DRANOFF: Okay. As long as</p> <p>25 we all understand what "federal</p>	<p>7</p> <p>1 D. KEKANA</p> <p>2 Ms. Phillips complaints of discrimination.</p> <p>3 MR. DRANOFF: Derek, I'm sorry</p> <p>4 to interrupt. It just hit me in the</p> <p>5 head.</p> <p>6 Bruce, when we were talking</p> <p>7 about the stipulations, you said we</p> <p>8 agreed to abide by the federal rules.</p> <p>9 Are we abiding by federal rules or</p> <p>10 are we abiding by certain</p> <p>11 stipulations?</p> <p>12 MR. SELL: Is that fair with</p> <p>13 everyone? We are doing a Zoom</p> <p>14 mediation; and we are going consent</p> <p>15 to doing it virtually as the notice</p> <p>16 indicated.</p> <p>17 MR. DRANOFF: That is fine.</p> <p>18 But what I'm wondering, for instance,</p> <p>19 to move the deposition along today do</p> <p>20 you want to stipulate that we are</p> <p>21 preserving all objections except to</p> <p>22 form, or do you prefer that counsel</p> <p>23 interpose objections on other grounds</p> <p>24 as well?</p> <p>25 That is why I wanted to clarify</p>
<p>6</p> <p>1 D. KEKANA</p> <p>2 stips" are, okay.</p> <p>3 MR. SELLS: Absolutely.</p> <p>4 MR. MENKEN: To me what that</p> <p>5 means, Derek, this deposition is</p> <p>6 being done pursuant to the federal</p> <p>7 Rules of Professional Conduct federal</p> <p>8 procedure, correct?</p> <p>9 MR. SELL: Correct. Got it.</p> <p>10 Q. Good morning, Ms. Deliwe --</p> <p>11 A. Good morning.</p> <p>12 Q. My name is Derek Sells; and I, along</p> <p>13 with my partner, Mina Malik and our colleague</p> <p>14 Monique Milner, represent Marjorie Phillips</p> <p>15 in a lawsuit against F.I.T. and others</p> <p>16 concerning acts of discrimination and</p> <p>17 retaliation that she made complaints about.</p> <p>18 Do you understand why you are here</p> <p>19 today?</p> <p>20 A. Yes.</p> <p>21 Q. Okay.</p> <p>22 What is your understanding of why</p> <p>23 you are here today?</p> <p>24 A. I'm here to speak about my knowledge</p> <p>25 as it pertains to the incident involving</p>	<p>8</p> <p>1 D. KEKANA</p> <p>2 are you going by the federal rules or</p> <p>3 do you want to go with the</p> <p>4 stipulations? I'm fine with either.</p> <p>5 I just want to make sure we all have</p> <p>6 clarity.</p> <p>7 MR. SELLS: I think we are</p> <p>8 going to do both, right? I mean,</p> <p>9 it's the stips that you make an</p> <p>10 objection and it is an objection and</p> <p>11 it is preserved as to whatever the</p> <p>12 objection might be. You know you</p> <p>13 will state it simply. No speaking</p> <p>14 objections and so forth. I don't</p> <p>15 think it's a big deal, Eric, really.</p> <p>16 MR. DRANOFF: Okay. Well --</p> <p>17 okay. That's fine.</p> <p>18 MR. SELLS: All right. So --</p> <p>19 MR. DRANOFF: Yeah.</p> <p>20 Q. So, Ms. Kekana, do you understand</p> <p>21 that you are also here in addition to</p> <p>22 answering questions concerning Ms. Phillips's</p> <p>23 complaints, you're also here as a</p> <p>24 representative of F.I.T. to speak about</p> <p>25 certain issues relating to human resources</p>

<p style="text-align: right;">9</p> <p>1 D. KEKANA</p> <p>2 functions, complaint procedures, as well as</p> <p>3 the relationship between the union and F.I.T.</p> <p>4 as it relates to unionized employees?</p> <p>5 MR. MELITO: Objection.</p> <p>6 Q. Do you understand that?</p> <p>7 MR. MELITO: Objection. She is</p> <p>8 designated as the witness for the</p> <p>9 following 30(b)(6) topics, the EEOC</p> <p>10 policies including reporting</p> <p>11 discrimination or retaliation,</p> <p>12 investigating complaints of</p> <p>13 discrimination and retaliation,</p> <p>14 employee discipline relating to</p> <p>15 discrimination retaliation and</p> <p>16 employee training relating to</p> <p>17 discrimination retaliation. The</p> <p>18 other topics were designated for the</p> <p>19 next 30(b)(6) deponent.</p> <p>20 MR. SELIS: Okay.</p> <p>21 Q. Do you understand that, Ms. Kekana?</p> <p>22 A. Can you repeat the question?</p> <p>23 Q. Sure.</p> <p>24 Do you understand that you are also</p> <p>25 here as a representative witness for F.I.T.</p>	<p style="text-align: right;">11</p> <p>1 D. KEKANA</p> <p>2 And if for any reason you do not</p> <p>3 understand the question that I have asked you,</p> <p>4 please tell me so that I can rephrase it or</p> <p>5 otherwise help you to understand what that</p> <p>6 question. Is that fair enough?</p> <p>7 A. Yes.</p> <p>8 Q. Okay.</p> <p>9 Now, today you're free pretty much</p> <p>10 at any time to take a break. All you have to</p> <p>11 do is ask me. The one thing that I'll ask</p> <p>12 is, If there is a pending question that you</p> <p>13 answer that question before you take a break.</p> <p>14 Is that fair?</p> <p>15 A. Yes.</p> <p>16 Q. Okay.</p> <p>17 Can you tell us how you are</p> <p>18 currently employed?</p> <p>19 A. Can you rephrase the question?</p> <p>20 Q. Sure. Where do you work?</p> <p>21 A. I work at the Fashion Institute of</p> <p>22 Technology.</p> <p>23 Q. All right.</p> <p>24 And what is your title?</p> <p>25 A. My title is director of affirmative</p>
<p style="text-align: right;">10</p> <p>1 D. KEKANA</p> <p>2 on the topics of EEOC, complaint procedures,</p> <p>3 employee discipline, as well as employee</p> <p>4 training as it relates to EEOC topics? Are</p> <p>5 you aware of that?</p> <p>6 A. Yes, I'm aware of that.</p> <p>7 Q. Okay.</p> <p>8 Is there any reason that you will</p> <p>9 not be able to understand questions that are</p> <p>10 asked of you today?</p> <p>11 A. No.</p> <p>12 Q. So you are not taking any medication</p> <p>13 or you are not under the influence of any</p> <p>14 drug that could affect your ability to listen</p> <p>15 and understand questions that are asked of</p> <p>16 you today?</p> <p>17 A. No.</p> <p>18 Q. Okay. All right.</p> <p>19 Then I will assume that when I ask</p> <p>20 you a question and you answer it that you</p> <p>21 understood the question that I asked you and</p> <p>22 you are answering that question. Is that</p> <p>23 fair?</p> <p>24 A. Yes.</p> <p>25 Q. All right.</p>	<p style="text-align: right;">12</p> <p>1 D. KEKANA</p> <p>2 action and Title 9 coordinator.</p> <p>3 Q. All right.</p> <p>4 And how long have you held that</p> <p>5 position?</p> <p>6 A. I have been in this position for the</p> <p>7 past six years.</p> <p>8 Q. And prior to that, what position</p> <p>9 were you in?</p> <p>10 A. My prior position was affirmative</p> <p>11 action specialist.</p> <p>12 Q. Was that with F.I.T. as well?</p> <p>13 A. Yes.</p> <p>14 Q. When did you become an affirmative</p> <p>15 action specialist for F.I.T.?</p> <p>16 A. That was in 2013.</p> <p>17 Q. Did you work at F.I.T. before 2013?</p> <p>18 A. Yes.</p> <p>19 Q. What position did you hold at F.I.T.</p> <p>20 before 2013?</p> <p>21 A. Administrative aide to the</p> <p>22 affirmative action officer.</p> <p>23 Q. And how long were you in that</p> <p>24 position?</p> <p>25 A. I was in that position for five</p>

<p style="text-align: right;">13</p> <p>1 D. KEKANA</p> <p>2 years.</p> <p>3 Q. So, that would have been sometime</p> <p>4 around 2008; that is correct?</p> <p>5 A. Yes.</p> <p>6 Q. When did you start at F.I.T.?</p> <p>7 A. April 1st, 2008.</p> <p>8 Q. Before starting at F.I.T., did you</p> <p>9 work anywhere else?</p> <p>10 A. Yes.</p> <p>11 Q. Tell me where you worked.</p> <p>12 A. Immediately preceding, I worked for</p> <p>13 the Blackstone Group.</p> <p>14 Q. The what?</p> <p>15 A. The Blackstone Group.</p> <p>16 Q. Okay.</p> <p>17 And what was your position at the</p> <p>18 Blackstone Group?</p> <p>19 A. Administrative assistant.</p> <p>20 Q. In what area?</p> <p>21 A. I was what was referred to as a</p> <p>22 floater, so I worked within several</p> <p>23 departments within the Blackstone Group.</p> <p>24 Q. For how long did you work for the</p> <p>25 Blackstone Group?</p>	<p style="text-align: right;">15</p> <p>1 D. KEKANA</p> <p>2 Q. Did you graduate?</p> <p>3 A. I did.</p> <p>4 Q. What year did you graduate?</p> <p>5 A. 2001.</p> <p>6 Q. Before John Jay, what did you do?</p> <p>7 A. I was a student.</p> <p>8 Q. Where were you a student?</p> <p>9 A. Brooklyn Technical High School.</p> <p>10 Q. Right from high school you went to</p> <p>11 John Jay; is that correct?</p> <p>12 A. Correct.</p> <p>13 Q. When did you graduate high school?</p> <p>14 A. 1997.</p> <p>15 Q. You went to John Jay in 1997?</p> <p>16 A. Correct.</p> <p>17 Q. Got it.</p> <p>18 You graduated 2001; is that correct?</p> <p>19 A. Correct.</p> <p>20 Q. Got it. All right. So I think I'm</p> <p>21 all caught up.</p> <p>22 Now, did you ever get fired from a</p> <p>23 job?</p> <p>24 A. No.</p> <p>25 Q. Have you ever experienced race</p>
<p style="text-align: right;">14</p> <p>1 D. KEKANA</p> <p>2 A. Two years.</p> <p>3 Q. And when would those two years have</p> <p>4 been?</p> <p>5 A. That would have been 2006 through</p> <p>6 2008.</p> <p>7 Q. Where did you work prior to</p> <p>8 Blackstone Group?</p> <p>9 A. I worked for John Jay College of</p> <p>10 Criminal Justice.</p> <p>11 Q. And what did you do at John Jay?</p> <p>12 A. I was an office manager.</p> <p>13 Q. For how long did you work at John</p> <p>14 Jay?</p> <p>15 A. Five years.</p> <p>16 Q. So, that would have been from 2002</p> <p>17 to 2008?</p> <p>18 A. No, that would have been from 2001</p> <p>19 to 2006.</p> <p>20 Q. Oh, sorry. Okay.</p> <p>21 And what did you do before John Jay?</p> <p>22 A. I was a student.</p> <p>23 Q. Where did you go to school?</p> <p>24 A. John Jay College of Criminal</p> <p>25 Justice.</p>	<p style="text-align: right;">16</p> <p>1 D. KEKANA</p> <p>2 discrimination?</p> <p>3 MR. MELITO: Objection.</p> <p>4 Q. You could answer.</p> <p>5 MR. MELITO: You could answer,</p> <p>6 Ms. Kekana.</p> <p>7 A. Yes.</p> <p>8 Q. Tell me about it. When was the</p> <p>9 first time you remember experiencing race</p> <p>10 discrimination?</p> <p>11 MR. MELITO: Objection. You</p> <p>12 could answer.</p> <p>13 A. As a small child living in South</p> <p>14 Africa.</p> <p>15 Q. Okay.</p> <p>16 What was it that you felt?</p> <p>17 MR. MELITO: I'm just going to</p> <p>18 note, so I do not keep interrupting</p> <p>19 this line of questioning, I'm going</p> <p>20 state a standing objection.</p> <p>21 MR. SELLS: That's fine.</p> <p>22 Q. What was your experience?</p> <p>23 A. I lived in a black township which is</p> <p>24 where black people in South Africa during</p> <p>25 that time were relegated to live based on the</p>

<p style="text-align: right;">17</p> <p>1 D. KEKANA</p> <p>2 apartheid system.</p> <p>3 Q. Which township was that?</p> <p>4 A. Diepkloof Soweto, Zone 3. D, as in</p> <p>5 David; I-E-P-K-L-O-O-F, as in Frank.</p> <p>6 Q. What about living in -- you said</p> <p>7 that was in Soweto; is that right?</p> <p>8 A. Correct.</p> <p>9 Q. So, was that the same township that</p> <p>10 Nelson Mandela and his family lived in?</p> <p>11 A. Soweto is comprised of multiple</p> <p>12 townships. So, Nelson Mandela it's from</p> <p>13 Orlando Township, which is a neighboring</p> <p>14 township to Diepkloof.</p> <p>15 Q. Got it.</p> <p>16 And he lived just a block away from</p> <p>17 Bishop Tutu, right?</p> <p>18 A. Correct.</p> <p>19 Q. So, that was also in that township?</p> <p>20 A. Correct.</p> <p>21 Q. "Soweto," what does that stand for;</p> <p>22 is it the southwest township?</p> <p>23 A. That's correct, Soweto stands for</p> <p>24 southwest township.</p> <p>25 Q. Got it.</p>	<p style="text-align: right;">19</p> <p>1 D. KEKANA</p> <p>2 objection to all the questions. You</p> <p>3 don't need to keep saying objection.</p> <p>4 MR. MELITO: This --</p> <p>5 MR. SELLS: You got it. You</p> <p>6 got it.</p> <p>7 MR. MELITO: This is a new</p> <p>8 objection for harassing the witness;</p> <p>9 and to the extent she does not feel</p> <p>10 comfortable answering, she does not</p> <p>11 have to.</p> <p>12 MR. SELLS: Please, answer the</p> <p>13 question.</p> <p>14 MR. MELITO: To the extent you</p> <p>15 feel comfortable.</p> <p>16 A. Can you repeat the question?</p> <p>17 (Whereupon, the requested</p> <p>18 portion of the transcript was read</p> <p>19 back.)</p> <p>20 A. Can you rephrase the question?</p> <p>21 Q. Yes. Growing up in Soweto when you</p> <p>22 said you first experienced racial prejudice,</p> <p>23 how did it make you feel?</p> <p>24 A. As a child, I was scared.</p> <p>25 Q. And why were you scared?</p>
<p style="text-align: right;">18</p> <p>1 D. KEKANA</p> <p>2 When you say you first experienced</p> <p>3 racial prejudice, how did it make you feel?</p> <p>4 MR. MELITO: Objection.</p> <p>5 Q. How did it make you feel?</p> <p>6 MR. MELITO: To the extent this</p> <p>7 is harassing, I will also raise a new</p> <p>8 objection that it could be harassing</p> <p>9 to the witness to the extent --</p> <p>10 MR. SELLS: All right. All</p> <p>11 right. Hold on --</p> <p>12 MR. MELITO: She can answer.</p> <p>13 MR. SELLS: Okay. All right.</p> <p>14 Fine.</p> <p>15 MR. MELITO: She is not the one</p> <p>16 raising any discrimination claims</p> <p>17 here. This is going, I think, out</p> <p>18 of --</p> <p>19 MR. SELLS: Lesley, can you</p> <p>20 make sure that when these speaking</p> <p>21 objections take place, I don't want</p> <p>22 this coming out of my time. All</p> <p>23 right? I mean, I thought we just</p> <p>24 went through this. Nicholas, you</p> <p>25 just said you have a standing</p>	<p style="text-align: right;">20</p> <p>1 D. KEKANA</p> <p>2 MR. MELITO: Objection.</p> <p>3 A. (No Response.)</p> <p>4 MR. MELITO: Ms. Kekana, I can</p> <p>5 see you are distraught from this line</p> <p>6 of questioning. And since I believe</p> <p>7 it is harassing and in no way</p> <p>8 relevant to anything in this</p> <p>9 litigation, I'm going to instruct you</p> <p>10 not to respond to this line of</p> <p>11 questioning.</p> <p>12 Please, move onto a different --</p> <p>13 MR. SELLS: I'm not going move</p> <p>14 on, Nicholas --</p> <p>15 MR. MELITO: We could get the</p> <p>16 court on the phone. I'm instructing</p> <p>17 her not to answer. You can --</p> <p>18 MR. SELLS: Okay --</p> <p>19 MR. MELITO: This is way</p> <p>20 outside the scope of anything, so --</p> <p>21 MR. SELLS: Oh really? It is?</p> <p>22 MR. MELITO: Yeah. Yes, you're</p> <p>23 talking about --</p> <p>24 MR. SELL: I tell you what,</p> <p>25 we'll mark this part of the</p>

<p style="text-align: right;">21</p> <p>1 D. KEKANA</p> <p>2 deposition and we'll come back to it.</p> <p>3 I will move forward.</p> <p>4 Q. When you said you felt scared did</p> <p>5 you feel scared for your life --</p> <p>6 MR. MELITO: Objection. This</p> <p>7 is the same line of questioning about</p> <p>8 her -- I instructed her not to</p> <p>9 answer; please move on to a different</p> <p>10 line of questioning --</p> <p>11 MR. SELLS: Okay --</p> <p>12 MR. MELITO: I will --</p> <p>13 MR. SELLS: New to the case --</p> <p>14 I know you're new to case, Nicholas.</p> <p>15 MR. MELITO: You're not going</p> <p>16 to -- I'm going --</p> <p>17 MR. SELLS: Hold on. I know</p> <p>18 you are new to the case, Nicholas;</p> <p>19 but one of the allegations to the</p> <p>20 case is that my client, Ms. Phillips,</p> <p>21 after experiencing race</p> <p>22 discrimination felt scared for her</p> <p>23 life, and that's why I think this is</p> <p>24 entirely appropriate; because --</p> <p>25 MR. MELITO: It is not --</p>	<p style="text-align: right;">23</p> <p>1 D. KEKANA</p> <p>2 discrimination and retaliation?</p> <p>3 A. Yes.</p> <p>4 Q. Okay.</p> <p>5 One of the things that Ms. Phillips</p> <p>6 complained about in terms of that was her</p> <p>7 fear?</p> <p>8 MR. MELITO: Objection.</p> <p>9 Q. Is that right?</p> <p>10 MR. MELITO: Objection.</p> <p>11 Q. Is that right, Ms. Kekana?</p> <p>12 A. When Ms. Phillips came to me with</p> <p>13 her initial complaint she did not indicate</p> <p>14 that she was fearful in any way.</p> <p>15 Q. That was not my question,</p> <p>16 Ms. Kekana. I said, You investigated my</p> <p>17 client's claims of discrimination and</p> <p>18 retaliation claims, correct?</p> <p>19 A. I investigated her complaint of</p> <p>20 discrimination.</p> <p>21 Q. Oh. You didn't investigate the</p> <p>22 complaint of retaliation when my client</p> <p>23 claimed that Ms. Barton threatened to kill</p> <p>24 her? You didn't investigate that; is that</p> <p>25 right?</p>
<p style="text-align: right;">22</p> <p>1 D. KEKANA</p> <p>2 MR. SELLS: Because Ms. Kekana</p> <p>3 is the one who investigated my</p> <p>4 client's claims that is a question of</p> <p>5 bias, all right. So please, you know</p> <p>6 when you make these arguments,</p> <p>7 there's basis for my question.</p> <p>8 Now, do you want to withdraw</p> <p>9 your instruction to Ms. Kekana and</p> <p>10 tell her she can answer the question</p> <p>11 now that I have made my -- my purpose</p> <p>12 in asking the question known?</p> <p>13 MR. MELITO: No, I will not</p> <p>14 withdraw my objection.</p> <p>15 MR. SELLS: Okay.</p> <p>16 MR. MELITO: You can contact</p> <p>17 the court, and I will note for the</p> <p>18 record that Ms. Kekana is physically</p> <p>19 distraught. She looks like she is</p> <p>20 crying because of your harassing</p> <p>21 questions. I will note that for the</p> <p>22 record.</p> <p>23 MR. SELLS: All right.</p> <p>24 Q. By the way, Ms. Kekana, did you</p> <p>25 investigate Ms. Phillips's complaints of</p>	<p style="text-align: right;">24</p> <p>1 D. KEKANA</p> <p>2 MR. MELITO: Objection.</p> <p>3 A. No, that --</p> <p>4 Q. Go ahead --</p> <p>5 MR. MELITO: Go ahead.</p> <p>6 Q. -- you can answer.</p> <p>7 A. No, that was handled by the Human</p> <p>8 Resources Office.</p> <p>9 Q. So you never even heard that, right?</p> <p>10 You never heard from Ms. Phillips directly</p> <p>11 that she felt scared for her life because of</p> <p>12 what Marilyn Barton said to her on May 16 of</p> <p>13 2019; is that correct?</p> <p>14 MR. MELITO: Objection.</p> <p>15 A. I did speak to Ms. Phillips. She</p> <p>16 indicated that she had had -- that she did</p> <p>17 feel fearful. I instructed her in writing to</p> <p>18 go to Public Safety --</p> <p>19 Q. Okay. Okay. I didn't ask you all</p> <p>20 that. I didn't ask you all that, Ms. Kekana.</p> <p>21 I just asked you whether or not my client</p> <p>22 indicated to you that she was afraid for her</p> <p>23 life as a result of her complaints of</p> <p>24 discrimination and/or retaliation; isn't that</p> <p>25 right --</p>

<p style="text-align: right;">25</p> <p>1 D. KEKANA</p> <p>2 MR. MELITO: Objection --</p> <p>3 Q. -- that's what I asked you. Is that</p> <p>4 what I asked you, Ms. Kekana --</p> <p>5 MR. MELITO: Objection. You</p> <p>6 are being very -- you are harassing</p> <p>7 the witness right now with your tone.</p> <p>8 I would ask you to --</p> <p>9 MR. SELLS: Nicholas --</p> <p>10 MR. MELITO: Professional --</p> <p>11 MR. SELLS: Nicholas.</p> <p>12 Nicholas, I tell you what. Say</p> <p>13 objection. All right. Say</p> <p>14 objection. All right. I'm not going</p> <p>15 to tolerate you speaking throughout</p> <p>16 my deposition, okay. So don't do it.</p> <p>17 MR. MELITO: Just for the -- I</p> <p>18 will note for the record --</p> <p>19 MR. SELLS: Listen, Nicholas --</p> <p>20 MR. MELITO: I have to give an --</p> <p>21 MR. SELLS: Nicholas.</p> <p>22 Nicholas. Nicholas, stop. Please</p> <p>23 stop.</p> <p>24 MR. MELITO: Derek.</p> <p>25 MR. DRANOFF: I would like to</p>	<p style="text-align: right;">27</p> <p>1 D. KEKANA</p> <p>2 MR. DRANOFF: If I may for one</p> <p>3 second, I want to ask the reporter</p> <p>4 because this was noticed as a video</p> <p>5 deposition.</p> <p>6 MR. SELLS: This is not noticed</p> <p>7 as a video deposition. So I don't</p> <p>8 know what you're talking about with</p> <p>9 that, Eric.</p> <p>10 Q. So, Ms. Kekana, if we could just get</p> <p>11 back on track. So, you felt scared when you</p> <p>12 first experienced racial discrimination; is</p> <p>13 that correct?</p> <p>14 MR. MELITO: Objection. If we</p> <p>15 need to --</p> <p>16 A. Yes, as a two-year old I felt scared</p> <p>17 when I experienced racial discrimination.</p> <p>18 Q. Got it.</p> <p>19 How did you express that fear as a</p> <p>20 two-year old?</p> <p>21 MR. MELITO: Objection. Do not</p> <p>22 answer.</p> <p>23 If you are going to ask about</p> <p>24 my -- about Ms. Kekana's personal</p> <p>25 experiences when she was two years</p>
<p style="text-align: right;">26</p> <p>1 D. KEKANA</p> <p>2 ask the reporter something. If I</p> <p>3 could ask the reporter something.</p> <p>4 MR. SELLS: You know what, I'm --</p> <p>5 you got to stop, Nicholas.</p> <p>6 Seriously, you got to stop. All</p> <p>7 right. It's ridiculous --</p> <p>8 MR. MELITO: I'm allowed to</p> <p>9 note an objection --</p> <p>10 MR. SELLS: I'm allowed to ask</p> <p>11 questions, Nicholas --</p> <p>12 MR. MELITO: Yes, and I'm</p> <p>13 allowed to note an objection. And</p> <p>14 this is the precise behavior that you</p> <p>15 yourself have done in Ms. -- during</p> <p>16 defendant's deposition of Plaintiff.</p> <p>17 So --</p> <p>18 MR. SELLS: All right --</p> <p>19 MR. MELITO: So, I will note my</p> <p>20 objections when appropriate if they</p> <p>21 need to be elaborated.</p> <p>22 MR. DRANOFF: If I may,</p> <p>23 gentlemen.</p> <p>24 Q. Ms. Kekana. Ms. Kekana, if we could</p> <p>25 just get back on track.</p>	<p style="text-align: right;">28</p> <p>1 D. KEKANA</p> <p>2 old as a child, we need to get the</p> <p>3 court on the phone because you're</p> <p>4 wasting your time right now. You</p> <p>5 are because you are wasting your</p> <p>6 time; and if not, let's move on to a</p> <p>7 different line of questioning.</p> <p>8 Q. Did that fear persist after --</p> <p>9 MR. MELITO: Objection.</p> <p>10 Objection. We are going -- I'm</p> <p>11 making a point. We will call the</p> <p>12 court right now.</p> <p>13 MR. SELLS: On what basis?</p> <p>14 What basis, Nicholas?</p> <p>15 MR. MELITO: Because you're</p> <p>16 harassing -- you're not following the</p> <p>17 Rules of Professional Conduct federal</p> <p>18 procedure. You are harassing the</p> <p>19 witness. This is a completely</p> <p>20 inappropriate line of questioning. I</p> <p>21 asked you multiple times to change</p> <p>22 your line of questioning and you want</p> <p>23 to proceed with it. So let's get the</p> <p>24 Judge on the phone so I don't have to</p> <p>25 keep objecting to it. Let's get the</p>

<p style="text-align: right;">29</p> <p>1 D. KEKANA</p> <p>2 Judge on the phone.</p> <p>3 MR. SELLS: All right. We'll</p> <p>4 get the Judge on the phone.</p> <p>5 Lesley, I asked about five</p> <p>6 minutes worth of questioning, not</p> <p>7 even --</p> <p>8 MR. MELITO: Yup, this is fully</p> <p>9 counted towards your time, Mr. Sells.</p> <p>10 MR. SELLS: Okay.</p> <p>11 (Whereupon, a brief recess was</p> <p>12 taken at 10:38 a.m.; after which, the</p> <p>13 proceedings continued at 10:40 a.m.</p> <p>14 as follows.)</p> <p>15 (Mr. Melito is calling Judge</p> <p>16 Daniels.)</p> <p>17 MR. MELITO: I believe the</p> <p>18 proper thing is to go to magistrate</p> <p>19 on this by reading Judge Daniels'</p> <p>20 rules. Unless anyone --</p> <p>21 MR. SELLS: What about the</p> <p>22 rule? What about the rule, Nicholas?</p> <p>23 MR. MELITO: I'm bringing it</p> <p>24 up, hold on. Telephone calls -- this</p> <p>25 is Judge Daniels' rules. Telephone</p>	<p style="text-align: right;">31</p> <p>1 D. KEKANA</p> <p>2 phone.</p> <p>3 MR. SELLS: Hi, this is Derek</p> <p>4 Sells calling from The Cochran Firm.</p> <p>5 I'm calling in reference to a</p> <p>6 deposition that is taking place</p> <p>7 currently where I'm the one who is</p> <p>8 questioning a witness in the Marjorie</p> <p>9 Phillips versus --</p> <p>10 CHAMBER SECRETARY: What is the</p> <p>11 docket number on the case?</p> <p>12 MR. SELL: Yes, it's CV-00 --</p> <p>13 it's CV-00221- -- 1-20CV00221.</p> <p>14 CHAMBER SECRETARY: Hold on.</p> <p>15 MR. SELLS: Can everybody hear</p> <p>16 me?</p> <p>17 (All parties respond</p> <p>18 affirmative.)</p> <p>19 CHAMBER SECRETARY: Good</p> <p>20 morning, Judge Daniels' chambers.</p> <p>21 How can I help you?</p> <p>22 MR. SELLS: Yes. Hi, this is</p> <p>23 Derek Sells from The Cochran Firm. I</p> <p>24 represent the plaintiff, Marjorie</p> <p>25 Phillips, in a case against Fashion</p>
<p style="text-align: right;">30</p> <p>1 D. KEKANA</p> <p>2 calls to chambers are permitted only</p> <p>3 in emergency situations requiring</p> <p>4 immediate attention. The following</p> <p>5 calls are never permitted. One is</p> <p>6 going down to calls requesting</p> <p>7 substantive or procedural legal</p> <p>8 advice. So that is one of the</p> <p>9 exceptions that a call is never</p> <p>10 permitted; so I would think --</p> <p>11 MR. SELLS: It has nothing do</p> <p>12 to do with procedure, does it?</p> <p>13 MR. MELITO: It does. I'm</p> <p>14 saying you're acting outside of</p> <p>15 federal procedure for your line of</p> <p>16 questioning --</p> <p>17 MR. SELLS: I'll call Judge</p> <p>18 Daniels, and we'll get him on the</p> <p>19 line right now.</p> <p>20 MR. MELITO: Ms. Simpson, when</p> <p>21 the judge goes -- just please put</p> <p>22 this on the record for the deposition</p> <p>23 that we are calling Judge Daniels,</p> <p>24 and please transcribe to the best</p> <p>25 that you can when the Judge is on the</p>	<p style="text-align: right;">32</p> <p>1 D. KEKANA</p> <p>2 Institute of Technology, Mary Davis</p> <p>3 and Marilyn Barton. I'm in the</p> <p>4 process of taking a deposition of a</p> <p>5 fact witness in a 30(b) (6) Witness.</p> <p>6 CHAMBER SECRETARY: Okay.</p> <p>7 MR. SELLS: And Counsel for the</p> <p>8 witness has instructed her not to</p> <p>9 answer questions that I have asked --</p> <p>10 CHAMBER SECRETARY: Okay.</p> <p>11 MR. SELLS: -- without getting</p> <p>12 a ruling. So we are calling to see</p> <p>13 if we could get a ruling.</p> <p>14 CHAMBER SECRETARY: Okay. And</p> <p>15 what is the nature of the question</p> <p>16 that you are seeking to ask?</p> <p>17 MR. SELLS: Yes, okay. So this</p> <p>18 is a case relating to claims of race</p> <p>19 discrimination and retaliation.</p> <p>20 CHAMBER SECRETARY: Okay.</p> <p>21 MR. SELLS: The person that we</p> <p>22 are asking the question of is the</p> <p>23 affirmative action employee for</p> <p>24 F.I.T. who is going to be talking</p> <p>25 about investigating my client's</p>

<p style="text-align: right;">33</p> <p>1 D. KEKANA</p> <p>2 claims as well as F.I.T.'s policies</p> <p>3 as it relates to that.</p> <p>4 I asked her specifically if she</p> <p>5 herself had faced discrimination in</p> <p>6 her life, and she indicated that she</p> <p>7 had, and I sought to inquire about</p> <p>8 it. I asked her how she felt about</p> <p>9 the discrimination she faced that she</p> <p>10 stated she felt fearful, and I wanted</p> <p>11 to continue that line of questioning</p> <p>12 when she indicate that had she felt</p> <p>13 fearful when she first experienced it</p> <p>14 as a two-year old.</p> <p>15 I wanted to try and bring her</p> <p>16 further along to see whether that</p> <p>17 fear continued as she grew older, and</p> <p>18 I was prevented from asking that</p> <p>19 question. The reason --</p> <p>20 CHAMBER SECRETARY: Okay --</p> <p>21 MR. SELLS: The reason I wanted</p> <p>22 to pursue it is because I believe it</p> <p>23 goes to the witness' bias because my</p> <p>24 client, when she made complaints of</p> <p>25 discrimination to F.I.T. including</p>	<p style="text-align: right;">35</p> <p>1 D. KEKANA</p> <p>2 witness?</p> <p>3 MR. SELLS: That's correct.</p> <p>4 CHAMBER SECRETARY: Okay.</p> <p>5 MR. MELITO: If this is -- this</p> <p>6 is Defense Counsel Nicholas Melito</p> <p>7 for F.I.T.</p> <p>8 CHAMBER SECRETARY: Okay.</p> <p>9 MR. MELITO: I would just like</p> <p>10 to note our objection before you</p> <p>11 speak to the Judge.</p> <p>12 CHAMBER SECRETARY: Yes.</p> <p>13 MR. MELITO: The line of</p> <p>14 questioning has nothing to do with</p> <p>15 this matter, and it's very harassing</p> <p>16 and the witness is physically</p> <p>17 distraught over it. You can see that</p> <p>18 she is tearing up and crying over the</p> <p>19 line of questioning being brought up</p> <p>20 since she was two years old.</p> <p>21 So our objection is because it</p> <p>22 is harassing the witness.</p> <p>23 CHAMBER SECRETARY: Okay. And</p> <p>24 do you have any -- is it just the</p> <p>25 objection to asking about her</p>
<p style="text-align: right;">34</p> <p>1 D. KEKANA</p> <p>2 her, indicated that she felt fearful</p> <p>3 and that's one of the disputed issues</p> <p>4 in this case; and so I think it goes</p> <p>5 to the heart of the matter.</p> <p>6 CHAMBER SECRETARY: To make</p> <p>7 sure I understand, you want to ask</p> <p>8 about, the affirmative action</p> <p>9 employee officer, you want to ask</p> <p>10 about her personal experience with</p> <p>11 discrimination from the ages of two</p> <p>12 until just generally.</p> <p>13 MR. SELLS: No. I want to take --</p> <p>14 I want to try and find out -- I want</p> <p>15 to inquire about how long she felt</p> <p>16 this fear and whether it was</p> <p>17 something that persisted up until</p> <p>18 this day, but I'm not even -- I</p> <p>19 haven't -- the witness has been</p> <p>20 instructed not to answer, and so I</p> <p>21 cannot pursue that line of questions.</p> <p>22 CHAMBER SECRETARY: Okay.</p> <p>23 MR. MELITO: If I may note --</p> <p>24 CHAMBER SECRETARY: This person</p> <p>25 is a 30(b) (6) Witness and a fact</p>	<p style="text-align: right;">36</p> <p>1 D. KEKANA</p> <p>2 childhood or anything within these</p> <p>3 lines of questioning at any age?</p> <p>4 MR. MELITO: This line of</p> <p>5 questioning.</p> <p>6 CHAMBER SECRETARY: Okay.</p> <p>7 Understood. Please hold and I will</p> <p>8 convey this to Judge Daniels.</p> <p>9 MR. MELITO: Thank you.</p> <p>10 MR. SELLS: Thank you.</p> <p>11 (On hold.)</p> <p>12 CHAMBER SECRETARY: Counsel,</p> <p>13 Judge Daniels said the parties should</p> <p>14 move on to a different topic.</p> <p>15 MR. MELITO: Thank you.</p> <p>16 CHAMBER SECRETARY: Okay.</p> <p>17 Thank you. Have a good day.</p> <p>18 MR. SELLS: All right.</p> <p>19 Q. Now, Ms. Kekana --</p> <p>20 MR. MELITO: I'm sorry. Before</p> <p>21 you go, can I just take five with the</p> <p>22 witness just so she can regroup after</p> <p>23 that line of questioning so she can,</p> <p>24 you know, calm her nerves after the</p> <p>25 harassing line of questioning?</p>

<p style="text-align: right;">37</p> <p>1 D. KEKANA</p> <p>2 Please. She just needs ---</p> <p>3 MR. SELLS: You need some time,</p> <p>4 Ms. Kekana.</p> <p>5 THE WITNESS: I would like to</p> <p>6 take a break, please.</p> <p>7 MR. SELLS: Sure. How long do</p> <p>8 you need?</p> <p>9 THE WITNESS: Can we have 10</p> <p>10 minutes, please.</p> <p>11 MR. SELLS: Sure. We'll come</p> <p>12 back at eleven o'clock; is that all</p> <p>13 right?</p> <p>14 MR. MELITO: Yes.</p> <p>15 (Whereupon, a brief recess was</p> <p>16 taken at 10:51 a.m.; after which, the</p> <p>17 proceeding continued at 11:02 a.m. as</p> <p>18 follows.)</p> <p>19 MR. SELLS: Are we all set to</p> <p>20 go?</p> <p>21 Q. Ms. Kekana, are you all right?</p> <p>22 A. I'm okay.</p> <p>23 Q. Okay, good. I see you're smiling</p> <p>24 now. You feel better? You feel a little bit</p> <p>25 better now?</p>	<p style="text-align: right;">39</p> <p>1 D. KEKANA</p> <p>2 Q. Did you receive any training in any</p> <p>3 of those areas?</p> <p>4 A. I did.</p> <p>5 Q. All right.</p> <p>6 Tell me what training you received</p> <p>7 in connection with those topics.</p> <p>8 A. I've received training via the</p> <p>9 Cornell Professional Studies School in</p> <p>10 handling employee investigations as well as</p> <p>11 in producing affirmative action plans and</p> <p>12 issues in and around diversity, equity and</p> <p>13 inclusion. I have also been certified by the</p> <p>14 American Association for Access Equity and</p> <p>15 Diversity as a certified affirmative action</p> <p>16 professional.</p> <p>17 Q. Is that it?</p> <p>18 A. I continue to have on a yearly basis</p> <p>19 additional continuing learning objectives</p> <p>20 that I must meet in order to keep up with my</p> <p>21 certifications; so there are various sorts of</p> <p>22 education webinars, conferences and</p> <p>23 presentations that I have to attend in order</p> <p>24 to be certified and continue my</p> <p>25 certification.</p>
<p style="text-align: right;">38</p> <p>1 D. KEKANA</p> <p>2 A. I'm okay.</p> <p>3 Q. Okay, well that's good. Good.</p> <p>4 So Ms. Kekana, before you ---</p> <p>5 MR. MELITO: Before you -- are</p> <p>6 we back on?</p> <p>7 Q. You indicated your title is director</p> <p>8 of affirmative action and the Title 9</p> <p>9 coordinator; is that correct?</p> <p>10 A. That is correct.</p> <p>11 Q. You held that position for six</p> <p>12 years; is that right?</p> <p>13 A. That is correct.</p> <p>14 Q. All right.</p> <p>15 And what are your responsibilities</p> <p>16 as the director of affirmative action and</p> <p>17 Title 9 coordinator</p> <p>18 A. Among my responsibilities and job</p> <p>19 duties include overseeing compliance as it</p> <p>20 relates to issues of affirmative action.</p> <p>21 Title 9, Title 7, education law --- New York</p> <p>22 State education law 129B as well as</p> <p>23 overseeing investigation of any complaints of</p> <p>24 discrimination, discriminatory harassment,</p> <p>25 sexual harassment or sexual misconduct.</p>	<p style="text-align: right;">40</p> <p>1 D. KEKANA</p> <p>2 Q. Okay.</p> <p>3 Do you belong to any organizations?</p> <p>4 A. Yes. I belong to NADOHE, which is</p> <p>5 the National Association of Diversity</p> <p>6 Officers in Higher Education. I belong to</p> <p>7 Triple AED, again, that is the American</p> <p>8 Association for Access Equity and Diversity</p> <p>9 as it relates to my job.</p> <p>10 Q. Got it.</p> <p>11 And have you ever received any</p> <p>12 training from attorneys who practice in the</p> <p>13 area of defending companies or institutions</p> <p>14 from lawsuits ---</p> <p>15 MR. MELITO: Objection --</p> <p>16 Q. -- related to discrimination?</p> <p>17 MR. MELITO: Objection. Don't</p> <p>18 answer. It will breach</p> <p>19 attorney/client privilege.</p> <p>20 MR. SELLS: No. No. I'm not</p> <p>21 talking about in connection with any</p> <p>22 lawsuit.</p> <p>23 Q. I'm just asking in general, have you</p> <p>24 received any training from any lawyers</p> <p>25 related to the topics that you oversee?</p>

<p style="text-align: right;">41</p> <p>1 D. KEKANA</p> <p>2 MR. MELITO: Again, objection;</p> <p>3 because even though it's not within</p> <p>4 this litigation, it could have been</p> <p>5 subject to attorney/client privilege</p> <p>6 in other matters or in general.</p> <p>7 MR. SELLS: Are you telling</p> <p>8 your her not answer?</p> <p>9 MR. MELITO: Yes, because it</p> <p>10 may breach attorney/client privilege.</p> <p>11 Q. The first question is, Have you ever</p> <p>12 received any training that was given by a</p> <p>13 lawyer? I'm not talking about in the context</p> <p>14 of a lawsuit. I'm just talking in general as</p> <p>15 part of your responsibilities.</p> <p>16 MR. MELITO: And I'm -- and I'm</p> <p>17 objecting because in general it could</p> <p>18 be part of attorney/client privilege --</p> <p>19 MR. SELLS: Okay. Come on</p> <p>20 Nicholas. Please --</p> <p>21 MR. MELITO: I'm not going to</p> <p>22 potentially breach -- wave</p> <p>23 attorney/client privilege just to</p> <p>24 please you with this. It could be</p> <p>25 attorney/client privilege --</p>	<p style="text-align: right;">43</p> <p>1 D. KEKANA</p> <p>2 A. Yes.</p> <p>3 Q. Okay.</p> <p>4 So tell me what law firm the</p> <p>5 attorney worked for?</p> <p>6 A. There have been several. Some --</p> <p>7 the Clear Law Institute, I don't know what</p> <p>8 firms the attorneys come from, but they offer</p> <p>9 several webinars throughout the year from</p> <p>10 multiple attorneys. I am not familiar with</p> <p>11 the law firms that they might originate from.</p> <p>12 For example, as well as with the</p> <p>13 Triple AED there are some attorneys who are</p> <p>14 members of the Triple AED who will give</p> <p>15 webinars, presentations, present at the</p> <p>16 annual conference. I don't know what firms --</p> <p>17 you know, I can't tell you off top of my head</p> <p>18 what firms they might come from; but they do</p> <p>19 have JD listed next to their name when they</p> <p>20 are on the program.</p> <p>21 Q. Okay.</p> <p>22 How many of these would you estimate</p> <p>23 you have attended in your professional</p> <p>24 career?</p> <p>25 A. I average about six to eight each</p>
<p style="text-align: right;">42</p> <p>1 D. KEKANA</p> <p>2 MR. SELLS: I'm not asking</p> <p>3 about the attorneys in this case, all</p> <p>4 right --</p> <p>5 MR. MELITO: Well, she --</p> <p>6 MR. SELLS: I'm asking about</p> <p>7 her training.</p> <p>8 Q. Out of all the training that you</p> <p>9 have had, out of all the programs you said</p> <p>10 that you have attended, were any of them done</p> <p>11 by attorneys?</p> <p>12 MR. MELITO: Let me just state</p> <p>13 with that clarification, Derek, I</p> <p>14 will allow it as long as it is</p> <p>15 nothing to do with F.I.T. training</p> <p>16 you did as part of your position with</p> <p>17 F.I.T.</p> <p>18 If it's outside, like the</p> <p>19 Triple AED, was an attorney doing</p> <p>20 that? That is what Mr. Sells is</p> <p>21 asking. Anything in these</p> <p>22 third-party vendors, if an attorney</p> <p>23 was actually conducting.</p> <p>24 THE WITNESS: Thank you for</p> <p>25 clarifying.</p>	<p style="text-align: right;">44</p> <p>1 D. KEKANA</p> <p>2 year.</p> <p>3 Q. And beginning when?</p> <p>4 A. This would be starting as far bag as</p> <p>5 2013.</p> <p>6 Q. And continue to today?</p> <p>7 A. Correct.</p> <p>8 Q. So, you have had somewhere between</p> <p>9 48 and 64 trainings by attorneys on how to</p> <p>10 handle your job; is that right?</p> <p>11 A. I would say I have attended that</p> <p>12 many webinars, presentations, conferences</p> <p>13 that have topics that contain my job and my</p> <p>14 duties.</p> <p>15 Q. Got it. All right.</p> <p>16 And with regard to F.I.T.'s, their</p> <p>17 policy as it relates to discrimination, what</p> <p>18 is your understanding of it?</p> <p>19 A. As far as it relates to the F.I.T.'s</p> <p>20 non-discrimination and antiharassment policy,</p> <p>21 it is a policy that lays out prohibited</p> <p>22 misconduct, defines for the campus community</p> <p>23 discrimination, discriminatory harassment,</p> <p>24 some terminology that is used. It also lays</p> <p>25 out the process that governs the</p>

<p style="text-align: right;">45</p> <p>1 D. KEKANA</p> <p>2 investigation process for those who put forth</p> <p>3 complaints of discrimination or</p> <p>4 discriminatory harassment.</p> <p>5 Q. Got it. So let's talk about that</p> <p>6 policy --</p> <p>7 A. It's breaking up for me.</p> <p>8 Q. Okay.</p> <p>9 In terms of the antidiscrimination</p> <p>10 policy, who does that policy apply to?</p> <p>11 A. That policy applies to the entire</p> <p>12 F.I.T. community, which includes our</p> <p>13 students, our employees, our contract</p> <p>14 employees on campus and visitors to the</p> <p>15 campus.</p> <p>16 Q. And in terms of -- you mentioned</p> <p>17 there was a complaint process that is</p> <p>18 associated with the discrimination policy; is</p> <p>19 that right?</p> <p>20 A. That's correct.</p> <p>21 Q. Can you explain that process?</p> <p>22 A. Certainly. What is outlined in the</p> <p>23 policy describes the role of the affirmative</p> <p>24 action officer, an investigator, what they</p> <p>25 will do and conduct as -- once they have</p>	<p style="text-align: right;">47</p> <p>1 D. KEKANA</p> <p>2 denigrate something based on a protected</p> <p>3 characteristic or class. And these protected</p> <p>4 characteristics are all listed in the policy</p> <p>5 but they could include for example age, race,</p> <p>6 citizenship, status, gender identity,</p> <p>7 religion, disability whether actual or</p> <p>8 perceived, pregnancy status. The list is</p> <p>9 much more expansive than I have just given</p> <p>10 here.</p> <p>11 Q. All right.</p> <p>12 And does this discrimination policy,</p> <p>13 does it also include the topic of</p> <p>14 retaliation?</p> <p>15 A. Yes, it does.</p> <p>16 Q. And what is your understanding of</p> <p>17 that?</p> <p>18 A. So this policy specifically will</p> <p>19 investigate any claims of retaliation of</p> <p>20 treatment to -- that is threatening,</p> <p>21 humiliating or in another way adverse against</p> <p>22 somebody who has participated in the process</p> <p>23 and that treatment must be based because of</p> <p>24 someone's participation in the process.</p> <p>25 Q. All right.</p>
<p style="text-align: right;">46</p> <p>1 D. KEKANA</p> <p>2 learned of a complaint. One of the first</p> <p>3 steps is to determine that this is the</p> <p>4 appropriate policy under which the complaint</p> <p>5 falls; meaning that it would implicate this</p> <p>6 policy.</p> <p>7 The next is to ask the question that</p> <p>8 if true, would this be a violation of the</p> <p>9 policy and then we proceed with an</p> <p>10 investigation. It goes through what the</p> <p>11 rights are allowed of all parties --</p> <p>12 Complainants, Respondents as well as</p> <p>13 witnesses as part of this, including advisors</p> <p>14 of choice, including rights to present</p> <p>15 evidence, rights to present witnesses. And</p> <p>16 then it also outlines for discipline where</p> <p>17 the Respondent is a student, discipline where</p> <p>18 Respondent is an employee as well as</p> <p>19 discipline if the Respondent were to have</p> <p>20 been a third-party member; meaning a</p> <p>21 contractor or a visitor.</p> <p>22 Q. And what is your understanding of an</p> <p>23 "act of discrimination"?</p> <p>24 A. An act of discrimination would be</p> <p>25 anything meant to humiliate, threaten,</p>	<p style="text-align: right;">48</p> <p>1 D. KEKANA</p> <p>2 And so what is your understanding if</p> <p>3 someone makes a complaint of discrimination</p> <p>4 and then subsequently believes and complains</p> <p>5 that they have been retaliated against? How</p> <p>6 is that supposed to be investigated?</p> <p>7 A. The investigation can look different</p> <p>8 ways, obviously, based on context because</p> <p>9 some retaliation may occur in various sorts</p> <p>10 of ways.</p> <p>11 So for example, if a student earns a</p> <p>12 grade that they don't believe is correct</p> <p>13 because they believe it's due to their</p> <p>14 complaint that they have put in, we'd first</p> <p>15 examine if there's any sort of plausibility</p> <p>16 to that complaint or is it that this is a</p> <p>17 complaint of a student who earned a grade</p> <p>18 that they may not be worthy but has nothing</p> <p>19 to do with the fact that they have put forth</p> <p>20 a complaint. That is an example of one of</p> <p>21 the assessments that we'll do contextually to</p> <p>22 determine if this would be retaliation that</p> <p>23 would be investigated through my office or if</p> <p>24 it would be investigated through another</p> <p>25 office on campus.</p>

<p style="text-align: right;">49</p> <p>1 D. KEKANA</p> <p>2 Q. Who makes that decision about</p> <p>3 whether or not a complaint is investigated</p> <p>4 through your office or through another</p> <p>5 office?</p> <p>6 A. Those determinations again can --</p> <p>7 you know once there is evidence that's been</p> <p>8 presented, depending on the context,</p> <p>9 sometimes it involves conversations with a</p> <p>10 number of groups or people on campus that are</p> <p>11 actually spelled out in the policy. This can</p> <p>12 include the vice president for academic</p> <p>13 affair, the department chairperson, the dean</p> <p>14 of students, our human resources personnel.</p> <p>15 Q. Is there a specific person that</p> <p>16 decides who is going to make the or who is</p> <p>17 going to do the investigation or what</p> <p>18 department is going to do the investigation?</p> <p>19 Is there a person that decides it?</p> <p>20 A. This is typically something that's</p> <p>21 done after conversation. It is not one</p> <p>22 person. It is done through conversation,</p> <p>23 through discussion and the determination is</p> <p>24 made collectively based on the nature of the</p> <p>25 complaint.</p>	<p style="text-align: right;">51</p> <p>1 D. KEKANA</p> <p>2 F.I.T. employee, your office investigates</p> <p>3 that; is that correct?</p> <p>4 A. That is correct.</p> <p>5 Q. Are there any exceptions?</p> <p>6 A. If for any reason -- and this is</p> <p>7 also spelled out as part of the policy. If</p> <p>8 based on the context there is any reason my</p> <p>9 office for lack of a better term there is a</p> <p>10 conflict of interest, there is determination</p> <p>11 that it would be made by, you know, where --</p> <p>12 where I would have to maybe recuse myself or</p> <p>13 a different office would have to recuse</p> <p>14 themselves. There are instances where that</p> <p>15 can happen and it's allowed for as part of</p> <p>16 the policy.</p> <p>17 Q. So if there is no conflict of</p> <p>18 interest, then a complaint of discrimination</p> <p>19 by one employee against another at F.I.T.</p> <p>20 will always be investigated by your office,</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. Let's talk about that complaint. If</p> <p>24 one employee in F.I.T. makes a complaint</p> <p>25 about another employee regarding</p>
<p style="text-align: right;">50</p> <p>1 D. KEKANA</p> <p>2 Q. And who is involved in this</p> <p>3 collective decision on who is going to do the</p> <p>4 investigation?</p> <p>5 A. Again, while my office is</p> <p>6 coordinating and corralling this information,</p> <p>7 we are involved primarily; but it can differ,</p> <p>8 again, as I listed before. Depending upon</p> <p>9 the context, it could be Human Resources. It</p> <p>10 can be the Dean of Students, it can be</p> <p>11 Academic Affair, it can be the department</p> <p>12 chairperson. It varies based on the context</p> <p>13 of nature of the complaint.</p> <p>14 Q. Got it.</p> <p>15 So let's say one employee makes a</p> <p>16 complaint that another employee has acted in</p> <p>17 a discriminatory way. Whose responsibility</p> <p>18 is it to investigate that complaint?</p> <p>19 A. So if we are talking about someone</p> <p>20 has been discriminatory, that comes under the</p> <p>21 auspicious of my office. The affirmative</p> <p>22 action and Title 9 office.</p> <p>23 Q. Got it.</p> <p>24 So if one F.I.T. employee complains</p> <p>25 about discriminatory conduct from another</p>	<p style="text-align: right;">52</p> <p>1 D. KEKANA</p> <p>2 discriminatory conduct, what would your</p> <p>3 office do upon receiving that complaint?</p> <p>4 What are you supposed to do?</p> <p>5 A. Certainly. So if the complaint is</p> <p>6 found to meet the merits of coming under the</p> <p>7 scope of the non-discrimination and</p> <p>8 antiharassment policy, my office would then</p> <p>9 commence an investigation.</p> <p>10 That would include first meeting</p> <p>11 with the Respondent to have the Respondent be</p> <p>12 presented with the complaint summary, the</p> <p>13 allegations and be given the opportunity to</p> <p>14 respond to those allegations. Then, the</p> <p>15 opportunity will present itself for</p> <p>16 Complainant witnesses to be interviewed, for</p> <p>17 Respondent witnesses to be interviewed and</p> <p>18 any witnesses that the investigator feels</p> <p>19 would be pertinent are there also</p> <p>20 interviewed. And any evidence that may have</p> <p>21 been submitted that supports or refutes the</p> <p>22 complaint is also reviewed.</p> <p>23 Q. Backing up for a moment with regard</p> <p>24 to the actual complaint of discrimination</p> <p>25 that one employee makes against another</p>

<p style="text-align: right;">53</p> <p>1 D. KEKANA</p> <p>2 employee by F.I.T., who is eligible -- under</p> <p>3 the policy who is eligible to receive that</p> <p>4 complaint?</p> <p>5 A. Certainly. As our</p> <p>6 non-discrimination and antiharassment policy</p> <p>7 states, anyone who is in a supervisory</p> <p>8 capacity and receives a complaint of</p> <p>9 discrimination must forward -- and the word</p> <p>10 is "must" in the complaint -- in the policy,</p> <p>11 excuse me -- must forward the complaint to</p> <p>12 the Affirmative Action Office.</p> <p>13 Q. Got it.</p> <p>14 Now, what would happen under the</p> <p>15 F.I.T.'s policies if an employee made a</p> <p>16 complaint to a supervisor about</p> <p>17 discrimination by another F.I.T. employee and</p> <p>18 the supervisor did not report it? What is</p> <p>19 the protocol?</p> <p>20 MR. MELITO: Objection. You</p> <p>21 can answer.</p> <p>22 A. I don't have a role with regards to</p> <p>23 any sort of discipline or sanction of any</p> <p>24 employee for meeting or not meeting their job</p> <p>25 duties; so I cannot say what will happen</p>	<p style="text-align: right;">55</p> <p>1 D. KEKANA</p> <p>2 said. I didn't say that there's no policy.</p> <p>3 I said I am not the person who does that; so</p> <p>4 I don't know what action would potentially be</p> <p>5 take but there is a discipline process at the</p> <p>6 college for any violation into a policy. It</p> <p>7 is outlined not only as part of the</p> <p>8 collective bargaining agreement, but it is</p> <p>9 also in keeping with, you know, just HR</p> <p>10 practices when it applies to discipline of</p> <p>11 employees for not doing -- not fulfilling</p> <p>12 their job duties.</p> <p>13 I want to clarify that I am not the</p> <p>14 person who has that role; so I cannot say</p> <p>15 definitively what specific action would be</p> <p>16 done; but I do --I will say that that's --</p> <p>17 that is something that's under the purview of</p> <p>18 Human Resources which has the expressed job</p> <p>19 of discipline and sanctioning including, you</p> <p>20 know, progressive discipline as well.</p> <p>21 Q. Okay.</p> <p>22 So again, I'll repeat my question.</p> <p>23 You're not aware of any written policy or any</p> <p>24 written rule that specifically addresses the</p> <p>25 failure of a supervisor at F.I.T. to report a</p>
<p style="text-align: right;">54</p> <p>1 D. KEKANA</p> <p>2 necessarily to someone.</p> <p>3 If there was that accusation, that</p> <p>4 will -- and I receive it in my office, I will</p> <p>5 report it to Human Resources.</p> <p>6 Q. Okay.</p> <p>7 Would it be a violation of F.I.T.'s</p> <p>8 policies if a supervisor received a complaint</p> <p>9 of discrimination from an employee and failed</p> <p>10 to report it to you or HR?</p> <p>11 A. Yes --</p> <p>12 MR. MELITO: Objection. That's</p> <p>13 okay, you can answer. I just wasn't</p> <p>14 sure if Derek was finished, that's</p> <p>15 why I waited.</p> <p>16 A. Yes.</p> <p>17 Q. But as far as you know, there is no</p> <p>18 written policy of disciplining or otherwise</p> <p>19 addressing a supervisor's failure to report a</p> <p>20 complaint of discrimination made to them by</p> <p>21 an employee at F.I.T.; is that right?</p> <p>22 MR. MELITO: Objection.</p> <p>23 THE WITNESS: May I answer?</p> <p>24 MR. MELITO: Yes.</p> <p>25 A. Okay. I want to clarify what I</p>	<p style="text-align: right;">56</p> <p>1 D. KEKANA</p> <p>2 complaint of discrimination that was made to</p> <p>3 them by another F.I.T. employee; is that</p> <p>4 correct?</p> <p>5 MR. MELITO: Objection.</p> <p>6 Asked and answered.</p> <p>7 Mischaracterizing prior testimony and</p> <p>8 also I would say it is outside the</p> <p>9 scope of her duties as 30(b) (6). To</p> <p>10 the extent she answers would be on</p> <p>11 behalf of in her personal capacity.</p> <p>12 You may answer.</p> <p>13 A. As I mentioned before, if -- there</p> <p>14 is a written collective bargaining agreement</p> <p>15 that outlines how to discipline functions</p> <p>16 folks and employees on campus who are part of</p> <p>17 the collective bargaining agreement. There</p> <p>18 is also a written employee manual. I cannot</p> <p>19 say with any specificity.</p> <p>20 But I can tell you as an employee at</p> <p>21 the college that this is something that is</p> <p>22 addressed through Human Resources.</p> <p>23 Q. But you cannot point to me -- you</p> <p>24 can't say, all right this is the policy, this</p> <p>25 is what happens to a supervisor who didn't do</p>

<p style="text-align: right;">57</p> <p>1 D. KEKANA</p> <p>2 it, who didn't report a complaint of</p> <p>3 discrimination that was made to them; you</p> <p>4 can't point me to that specific policy,</p> <p>5 right?</p> <p>6 MR. MELITO: Objection. You</p> <p>7 can answer.</p> <p>8 THE WITNESS: Okay.</p> <p>9 MR. MELITO: Again -- again,</p> <p>10 this is in her personal capacity.</p> <p>11 A. In my personal capacity, there's --</p> <p>12 Q. I'm not asking about -- I just asked</p> <p>13 a question. I'm not talking about personal</p> <p>14 capacity. I am asking you whether there is a</p> <p>15 specific policy at F.I.T. that will implement</p> <p>16 discipline for a supervisor who fails to</p> <p>17 report a complaint of discrimination that was</p> <p>18 made to them by another F.I.T. employee?</p> <p>19 MR. MELITO: Objection. Again,</p> <p>20 asked and answered --</p> <p>21 MR. SELLS: Nicholas.</p> <p>22 Nicholas, please --</p> <p>23 MR. MELITO: No. No, I have to</p> <p>24 Derek; because this is -- this is a</p> <p>25 hybrid deposition. She is also</p>	<p style="text-align: right;">59</p> <p>1 D. KEKANA</p> <p>2 Exhibit 3 -- as Exhibit 3.</p> <p>3 (Counsel is sharing the</p> <p>4 computer screen image.)</p> <p>5 MR. SELLS: For the record</p> <p>6 Plaintiff's Exhibit 3 is a document,</p> <p>7 12 pages, Bates stamped T361 through</p> <p>8 372.</p> <p>9 Q. Now, do you recognize this,</p> <p>10 Ms. Kekana?</p> <p>11 A. Yes.</p> <p>12 Q. Is this the policy that you were</p> <p>13 just describing?</p> <p>14 A. Yes.</p> <p>15 Q. Okay.</p> <p>16 Now you indicated -- and if we</p> <p>17 could go down to page -- Bates</p> <p>18 stamped page 369, Page 9. There we</p> <p>19 go, stop.</p> <p>20 In the discrimination policy</p> <p>21 where it says "complaint and</p> <p>22 investigation procedure where an</p> <p>23 employee is the Respondent."</p> <p>24 Is that where we get the "must"</p> <p>25 language that you're talking about?</p>
<p style="text-align: right;">58</p> <p>1 D. KEKANA</p> <p>2 appearing as a 30(b) (6) --</p> <p>3 MR. SELLS: All right. All</p> <p>4 right. I'll withdraw the question.</p> <p>5 Can we pull up Exhibit 3?</p> <p>6 Let's put up Exhibit 3.</p> <p>7 MR. MELITO: I'm sorry. Is</p> <p>8 this newly Exhibit 3, or are you</p> <p>9 pulling from Defendant's Exhibit 3</p> <p>10 from the prior deposition?</p> <p>11 MR. SELLS: Well, this is the</p> <p>12 way I marked the deposition exhibits</p> <p>13 for this purpose. So we're going to</p> <p>14 view Plaintiff's Exhibit 3. We can</p> <p>15 call it Plaintiff's 3.</p> <p>16 (Whereupon, Plaintiff's Exhibit</p> <p>17 3, 12-page document Bates stamped</p> <p>18 T361 through 372, was marked for</p> <p>19 identification as of this date.)</p> <p>20 MR. SELLS: If agreeable to</p> <p>21 everybody, the way that we have</p> <p>22 identified our exhibits is for our</p> <p>23 internal use; but if it is good with</p> <p>24 everybody, why don't we just go in</p> <p>25 order. So, this will be marking</p>	<p style="text-align: right;">60</p> <p>1 D. KEKANA</p> <p>2 A. That's correct.</p> <p>3 Q. All right.</p> <p>4 Now, tell me within the</p> <p>5 non-discrimination policy where there is a</p> <p>6 discipline stated for someone with supervisory</p> <p>7 responsibility who fails to make that</p> <p>8 complaint and fails to report it to the</p> <p>9 Affirmative Action Office; where is there a</p> <p>10 policy for discipline failing to do that?</p> <p>11 MR. MELITO: Objection. Are</p> <p>12 you going to allow her to scroll</p> <p>13 through the policy to find -- does</p> <p>14 she have control of this document?</p> <p>15 Q. Are you familiar with this policy,</p> <p>16 Ms. Kekana.</p> <p>17 A. Yes.</p> <p>18 Q. Okay.</p> <p>19 Where in the policy can we find a</p> <p>20 discipline for a supervisor who fails to</p> <p>21 report the complaint to you --</p> <p>22 MR. MELITO: Objection --</p> <p>23 THE WITNESS: Sorry.</p> <p>24 A. There is no discipline in this</p> <p>25 policy. There is no discipline in this</p>

<p style="text-align: right;">61</p> <p>1 D. KEKANA</p> <p>2 policy 'cause this office does not oversee</p> <p>3 discipline. Discipline is handled where</p> <p>4 employees are concerned by the Office of</p> <p>5 Human Resources. So if there is a violation</p> <p>6 to this policy, any part of this policy, it</p> <p>7 is reported to the Human Resources Office.</p> <p>8 Q. Where in the policy does it say</p> <p>9 that?</p> <p>10 MR. MELITO: Objection. If you</p> <p>11 give her control of the document, she</p> <p>12 can point you to it.</p> <p>13 Q. Does it exist in the document,</p> <p>14 Ms. Kekana?</p> <p>15 MR. MELITO: Objection. If you</p> <p>16 would like to take a minute to</p> <p>17 refresh your recollection of this</p> <p>18 document, you may request of Derek to</p> <p>19 give you control of this so you can --</p> <p>20 MR. SELLS: Are you instructing</p> <p>21 her, Nicholas? What are you talking</p> <p>22 about now? Are you making an</p> <p>23 objection, or are you just telling</p> <p>24 the witness what to do --</p> <p>25 MR. MELITO: I objected -- I</p>	<p style="text-align: right;">63</p> <p>1 D. KEKANA</p> <p>2 MR. MELITO: Objection.</p> <p>3 Ms. Kekana, if you would like to</p> <p>4 refresh your recollection of this</p> <p>5 document, please request Derek to</p> <p>6 allow you to review it.</p> <p>7 A. I wish to review the document so</p> <p>8 that I could actually find the space where it</p> <p>9 discusses this.</p> <p>10 Q. Okay. So why don't we go off the</p> <p>11 record --</p> <p>12 MR. MELITO: We're not going</p> <p>13 off the record.</p> <p>14 MR. SELLS: Yes, we are.</p> <p>15 MR. MELITO: No.</p> <p>16 MR. SELLS: She wants to review</p> <p>17 it. She will review on her own time.</p> <p>18 MR. MELITO: No.</p> <p>19 MR. SELLS: Yes.</p> <p>20 MR. MELITO: No.</p> <p>21 MR. SELLS: Yes.</p> <p>22 MR. MELITO: This continues</p> <p>23 time on or off the record.</p> <p>24 MR. SELLS: We will go off the</p> <p>25 record right now and --</p>
<p style="text-align: right;">62</p> <p>1 D. KEKANA</p> <p>2 mean --</p> <p>3 MR. SELLS: Objection on what</p> <p>4 basis?</p> <p>5 MR. MELITO: Cause --</p> <p>6 MR. SELLS: I asked her a</p> <p>7 simple question. Does it exist in</p> <p>8 this document?</p> <p>9 MR. MELITO: Proper way to</p> <p>10 introduce an exist is to allow the</p> <p>11 witness to review it prior to</p> <p>12 answering questions. Since you</p> <p>13 introduced it, she has every right to</p> <p>14 review it to give --</p> <p>15 MR. SELLS: Nicholas.</p> <p>16 Nicholas. Nicholas, I tell you what.</p> <p>17 Just stop.</p> <p>18 Q. Ms. Kekana, is there such a</p> <p>19 provision in this policy that says that a</p> <p>20 supervisor who fails to report a complaint of</p> <p>21 discrimination to the affirmative action</p> <p>22 officer will be reported to HR --</p> <p>23 MR. MELITO: Objection --</p> <p>24 Q. -- does it say that in this</p> <p>25 document?</p>	<p style="text-align: right;">64</p> <p>1 D. KEKANA</p> <p>2 MR. MELITO: No --</p> <p>3 MR. SELLS: And you could</p> <p>4 review the document.</p> <p>5 MR. MELITO: Objection. This</p> <p>6 is inappropriate.</p> <p>7 Q. What page do you want to go to,</p> <p>8 Ms. Kekana? What page do you want to go to</p> <p>9 tell me where you want to look?</p> <p>10 A. I'd like to start at the --</p> <p>11 MR. MELITO: At the --</p> <p>12 Q. Sure. Let's go to the beginning.</p> <p>13 Ms. Kekana, can we skip through the policy</p> <p>14 statement or do you need to read it?</p> <p>15 A. I'm reading it. Thank you.</p> <p>16 Q. Okay.</p> <p>17 It's in the policy statement, right,</p> <p>18 that HR -- that a supervisor who fails to</p> <p>19 report a complaint is subject to discipline.</p> <p>20 It's --</p> <p>21 MR. MELITO: Objection --</p> <p>22 Q. -- statement, right?</p> <p>23 MR. MELITO: Objection.</p> <p>24 Document speaks for itself, and now</p> <p>25 you're just testifying for the</p>

<p style="text-align: right;">65</p> <p>1 D. KEKANA</p> <p>2 witness. So allow her to review it,</p> <p>3 and she'll point you to the pertinent</p> <p>4 section.</p> <p>5 And we are still on the record,</p> <p>6 correct, Ms. Simpson?</p> <p>7 THE COURT REPORTER: We will</p> <p>8 never be off the record unless</p> <p>9 parties agree and say we're off the</p> <p>10 record.</p> <p>11 Q. Where are you up to now? Are you up</p> <p>12 to the first sentence yet, Ms. Kekana? I</p> <p>13 know you want to take as much time as you</p> <p>14 want, so just tell me where are you at now --</p> <p>15 MR. MELITO: Objection. Stop</p> <p>16 harassing the witness please --</p> <p>17 Q. Okay.</p> <p>18 Tell me --</p> <p>19 MR. MELITO: Disrespectful and</p> <p>20 unprofessional.</p> <p>21 Q. Is this funny to you, Ms. Kekana? I</p> <p>22 see you laughing.</p> <p>23 MR. MELITO: She's laughing at</p> <p>24 you disrespecting her. Stop</p> <p>25 harassing the witness and allow her</p>	<p style="text-align: right;">67</p> <p>1 D. KEKANA</p> <p>2 make a complaint or refer a complaint to you?</p> <p>3 Is it --</p> <p>4 MR. MELITO: Again --</p> <p>5 Q. -- is it in your definition section,</p> <p>6 Ms. Kekana?</p> <p>7 MR. MELITO: Objection. If you</p> <p>8 keep up this behavior, we will get</p> <p>9 back the court on the phone. I will</p> <p>10 not have you harass this witness.</p> <p>11 Okay? Act professional within the</p> <p>12 attorney code of conduct or local</p> <p>13 rules of this court, the federal</p> <p>14 rules and we can continue. If you</p> <p>15 keep up these tactics, we will get</p> <p>16 the Judge back on the phone.</p> <p>17 Q. Ms. Kekana, is it in the definition</p> <p>18 section?</p> <p>19 A. No, it is not.</p> <p>20 Q. Okay.</p> <p>21 So can we skip to the next part --</p> <p>22 A. Oh.</p> <p>23 MR. MELITO: What were you</p> <p>24 going to say, Ms. Kekana --</p> <p>25 Q. Please go to the next page. Keep</p>
<p style="text-align: right;">66</p> <p>1 D. KEKANA</p> <p>2 to review the document. You're being</p> <p>3 very unprofessional and you are</p> <p>4 borderline operating outside of our</p> <p>5 attorney code of conduct and also the</p> <p>6 lawful rules of this court.</p> <p>7 MR. SELLS: Okay. Yeah. Yeah.</p> <p>8 Anything else, Nicholas?</p> <p>9 MR. MELITO: No. I think I</p> <p>10 noted my objection of your behavior.</p> <p>11 MR. SELLS: Okay.</p> <p>12 Q. If we could just go down to who is</p> <p>13 "responsible for this policy." Do you see</p> <p>14 that?</p> <p>15 A. Yes, I see it.</p> <p>16 Q. Is it in there? Is it in there or</p> <p>17 can we move onto the next page?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Let's go to the next page.</p> <p>20 So is it in any of these things? Is it in</p> <p>21 the definition section?</p> <p>22 MR. MELITO: Again objection --</p> <p>23 Q. Ms. Kekana, I am asking you a</p> <p>24 question. Is it in the definition section</p> <p>25 what happens to a supervisor who fails to</p>	<p style="text-align: right;">68</p> <p>1 D. KEKANA</p> <p>2 going. We are still in the definition</p> <p>3 section. Keep going. Next page.</p> <p>4 "Principles." Is it in the "principles"</p> <p>5 section?</p> <p>6 A. I'm sorry. I can't read this at</p> <p>7 this time. It seems to be scrolling really</p> <p>8 quickly --</p> <p>9 Q. Okay.</p> <p>10 I am asking you is it in the</p> <p>11 "principles" --</p> <p>12 MR. MELITO: Objection. She is</p> <p>13 telling you she needs to review the</p> <p>14 policy --</p> <p>15 MR. SELLS: I tell you what,</p> <p>16 we'll take it off. Let's take it</p> <p>17 down, and we'll move onto another</p> <p>18 topic.</p> <p>19 Q. Have you been instructed to take as</p> <p>20 much time to look through documents as</p> <p>21 possibly possible, Ms. Kekana so as to drag</p> <p>22 on the deposition? Have you been --</p> <p>23 MR. MELITO: Objection --</p> <p>24 Q. -- instructed to do that?</p> <p>25 MR. MELITO: Objection. Do not</p>

<p style="text-align: right;">69</p> <p>1 D. KEKANA</p> <p>2 answer. Objection.</p> <p>3 MR. SELLS: Okay.</p> <p>4 Q. Because you know I have 14 hours</p> <p>5 with you; so if you want to be here for 14</p> <p>6 hours, then just keep it up --</p> <p>7 MR. MELITO: Ms. Kekana,</p> <p>8 objection. You do not have to</p> <p>9 answer, and he does not have 14 hours</p> <p>10 with you --</p> <p>11 MR. SELLS: She is being</p> <p>12 produced as a 30(b)(6) Witness as</p> <p>13 well as a personal witness; so I have</p> <p>14 14 hours. So keep it up.</p> <p>15 MR. MELITO: And every</p> <p>16 applicable case law states otherwise --</p> <p>17 MR. SELLS: Got it.</p> <p>18 MR. MELITO: I will take a</p> <p>19 break because, again, you are</p> <p>20 harassing our witness and she would</p> <p>21 like a 10 minutes break. We will go</p> <p>22 off the record --</p> <p>23 MR. SELLS: So, let me just ask</p> <p>24 this --</p> <p>25 Q. Ms. Kekana --</p>	<p style="text-align: right;">71</p> <p>1 D. KEKANA</p> <p>2 take 10 minutes --</p> <p>3 Q. Ms. Kekana, where is your cell</p> <p>4 phone? Where is your cell phone? Where is</p> <p>5 your cell phone, Ms. Kekana?</p> <p>6 A. My cell phone is in my pocketbook.</p> <p>7 Q. Okay.</p> <p>8 How many screens do you have --</p> <p>9 THE WITNESS: Can I take a</p> <p>10 break, please? Can I take a break,</p> <p>11 please?</p> <p>12 MR. MELITO: Yes, take a break.</p> <p>13 You do not have to answer anymore.</p> <p>14 Q. Are you going to start smiling again</p> <p>15 when you come back, or you going to just put</p> <p>16 on the crying face --</p> <p>17 MR. MELITO: Ms. Kekana, please</p> <p>18 go into the breakout room. Please,</p> <p>19 go into the breakout room. You do</p> <p>20 not have to be subjected to Derek's</p> <p>21 harassing ways, and we will get the</p> <p>22 court on the phone during this break.</p> <p>23 Thank you. You can go into the</p> <p>24 breakout room, Ms. Kekana; and we</p> <p>25 will go off the record.</p>
<p style="text-align: right;">70</p> <p>1 D. KEKANA</p> <p>2 MR. MELITO: No --</p> <p>3 Q. -- read your mind? Do you have some</p> <p>4 kind of signals that you are sending to one</p> <p>5 another? How is it that he can say you are</p> <p>6 feeling harassed right now? How is it --</p> <p>7 MR. MELITO: Because we are all</p> <p>8 witnessing --</p> <p>9 Q. You have a method of signalling each</p> <p>10 other?</p> <p>11 MR. MELITO: -- we are all</p> <p>12 listening to your harassing</p> <p>13 deposition right now; so yes --</p> <p>14 Q. Ms. Kekana, I am asking you a</p> <p>15 question?</p> <p>16 MR. MELITO: You do not have to</p> <p>17 answer --</p> <p>18 Q. Do you have a method of signalling</p> <p>19 Mr. Melito --</p> <p>20 MR. MELITO: Ms. Kekana, you do</p> <p>21 not have --</p> <p>22 Q. -- so he knows what is in your head?</p> <p>23 MR. MELITO: You do not have to</p> <p>24 answer. He is being harassing in</p> <p>25 asking improper questions. We will</p>	<p style="text-align: right;">72</p> <p>1 D. KEKANA</p> <p>2 (The witness has exited the</p> <p>3 conference room.)</p> <p>4 MR. MELITO: Derek, you want to</p> <p>5 get the court back on the phone if</p> <p>6 you're going to keep up these tactics</p> <p>7 and I expect better from an</p> <p>8 experienced, respected attorney like</p> <p>9 yourself so we could go -- we could</p> <p>10 go call the court, if you are still</p> <p>11 there; but you turned off your mic</p> <p>12 and your video.</p> <p>13 (Mr. Sells exited the video</p> <p>14 room.)</p> <p>15 MR. MELITO: We will see you</p> <p>16 all. We are going into the breakout</p> <p>17 room; please let us know if and when</p> <p>18 Derek returns.</p> <p>19 (Whereupon, a recess was taken</p> <p>20 at 11:43 a.m.; after which, the</p> <p>21 proceeding continued at 11:55 a.m. as</p> <p>22 follows.)</p> <p>23 MR. MELITO: Derek, I am going</p> <p>24 to call the court if you continue in</p> <p>25 this affirmative action. Do you want</p>

<p style="text-align: right;">73</p> <p>1 D. KEKANA</p> <p>2 to call the court?</p> <p>3 MR. SELLS: You call the court.</p> <p>4 It is your motion.</p> <p>5 (Mr. Melito is calling the</p> <p>6 court.)</p> <p>7 THE DEPUTY: Judge Daniels'</p> <p>8 chambers.</p> <p>9 MR. MELITO: This is Defense</p> <p>10 Counsel in connection with the</p> <p>11 Phillips V Fashion Institute matter.</p> <p>12 THE DEPUTY: What is the docket</p> <p>13 number, sir.</p> <p>14 MR. MELITO: Sure.</p> <p>15 20-CV-00221, and I would like to just</p> <p>16 let you know we are on the record at</p> <p>17 this deposition.</p> <p>18 THE DEPUTY: You are on the</p> <p>19 record?</p> <p>20 MR. MELITO: Yes.</p> <p>21 THE DEPUTY: Okay.</p> <p>22 MR. MELITO: Would you like us</p> <p>23 to go off the record for this call?</p> <p>24 THE DEPUTY: I'm the deputy. I</p> <p>25 don't know what the question is; and</p>	<p style="text-align: right;">75</p> <p>1 D. KEKANA</p> <p>2 MR. SELLS: Actually, actually</p> <p>3 I would like the judge to be here;</p> <p>4 because I want the record of the</p> <p>5 deposition to be read to the judge.</p> <p>6 Counsel for the witness has</p> <p>7 obstructed this deposition from the</p> <p>8 outset. He's been making speaking</p> <p>9 objections almost every single</p> <p>10 question. He's mischaracterized the</p> <p>11 record, and I would like the Judge to</p> <p>12 hear the transcript; so please ask</p> <p>13 the Judge to get on the -- to come in</p> <p>14 and listen to a read back of the</p> <p>15 questioning of this witness, please.</p> <p>16 MR. MELITO: And I obviously,</p> <p>17 Counsel for Defendant, F.I.T.,</p> <p>18 vehemently disagree with everything</p> <p>19 that opposing counsel just said as to</p> <p>20 the reality of what is actually going</p> <p>21 on in this deposition has occurred in</p> <p>22 the matter of two hours in the taking</p> <p>23 of the deposition, and we already had</p> <p>24 a prior ruling from Judge Daniels</p> <p>25 regarding Plaintiff Counsel's</p>
<p style="text-align: right;">74</p> <p>1 D. KEKANA</p> <p>2 the judge is not available right now.</p> <p>3 He is on the bench. So we can go off</p> <p>4 the record.</p> <p>5 MR. MELITO: Sure. Okay. Yes,</p> <p>6 we can go off.</p> <p>7 (Whereupon, an off-the-record</p> <p>8 discussion was held.)</p> <p>9 CHAMBER SECRETARY: Calling</p> <p>10 from judge's chambers.</p> <p>11 MR. MELITO: Yes, thank you. I</p> <p>12 just want to make sure Plaintiff's</p> <p>13 counsel is by -- we're in the middle</p> <p>14 of a deposition. All parties are</p> <p>15 here. With your permission we would</p> <p>16 like to go on the record at the</p> <p>17 deposition?</p> <p>18 CHAMBER SECRETARY: There is a</p> <p>19 ruling that you've requested from the</p> <p>20 judge. I'm just here to get both</p> <p>21 parties arguments, then I will relate</p> <p>22 to the judge.</p> <p>23 MR. MELITO: If you do not</p> <p>24 mind, we would like to put our</p> <p>25 positions --</p>	<p style="text-align: right;">76</p> <p>1 D. KEKANA</p> <p>2 behavior.</p> <p>3 MR. SELLS: That is a</p> <p>4 mischaracterization.</p> <p>5 CHAMBER SECRETARY: Yes --</p> <p>6 MR. SELLS: This witness cried</p> <p>7 because she was upset about a</p> <p>8 personal experience that she had;</p> <p>9 that was the only time and then she</p> <p>10 was laughing when we came back on the</p> <p>11 record. This is clearly something</p> <p>12 that they have decided was going to</p> <p>13 be a strategy, and if the judge will</p> <p>14 just --</p> <p>15 CHAMBER SECRETARY: I'm Judge</p> <p>16 Daniels' law clerk; and I'm trying to</p> <p>17 get your arguments so that I can</p> <p>18 convey them to him and he makes a</p> <p>19 ruling as to whether he is going to</p> <p>20 go on the record or join you in the</p> <p>21 call.</p> <p>22 So what information -- is the</p> <p>23 request, I believe, that you would</p> <p>24 like Judge Daniels to call in so that</p> <p>25 you could read him certain testimony?</p>

<p style="text-align: right;">77</p> <p>1 D. KEKANA</p> <p>2 MR. MELITO: I think it would</p> <p>3 be best that we terminate the</p> <p>4 deposition, and the parties can</p> <p>5 submit papers to Judge Daniels with</p> <p>6 appropriate citations to the record.</p> <p>7 MR. SELLS: No, we have</p> <p>8 scheduled this deposition; and we're</p> <p>9 going forward with it. This is not</p> <p>10 gonna --</p> <p>11 MR. MELITO: No --</p> <p>12 MR. SELLS: We want Judge</p> <p>13 Daniels to listen to this transcript --</p> <p>14 MR. MELITO: Not with your</p> <p>15 harassing --</p> <p>16 MR. DRANOFF: If I may. This</p> <p>17 is Eric Dranoff representing one of</p> <p>18 the co-defendants; and certainly</p> <p>19 under Rule 30D of the Civil Rules, an</p> <p>20 objecting party or any party can</p> <p>21 request and demand that a deposition</p> <p>22 be suspended or terminated to allow</p> <p>23 for the court to issue an order. And</p> <p>24 having observed this deposition and</p> <p>25 prior depositions, on behalf of Mary</p>	<p style="text-align: right;">79</p> <p>1 D. KEKANA</p> <p>2 the most prudent course of action is</p> <p>3 to suspend the deposition and submit</p> <p>4 papers to the Judge.</p> <p>5 CHAMBER SECRETARY: Okay. How</p> <p>6 much testimony -- if Plaintiff's</p> <p>7 Counsel could let me know how much</p> <p>8 testimony does he feel he wants Judge</p> <p>9 Daniels to hear?</p> <p>10 MR. SELLS: Oh, it's not much.</p> <p>11 Maybe like just two or three pages of</p> <p>12 speaking objections and interruptions</p> <p>13 by Defense Counsel. Some of it isn't</p> <p>14 even objections, he is directing the</p> <p>15 witness to, you know, refresh her</p> <p>16 recollection and to -- oh, you could</p> <p>17 take your time and read this.</p> <p>18 Read -- you know, stopping the --</p> <p>19 stopping the -- the -- the</p> <p>20 proceeding; it's ridiculous and all</p> <p>21 he needs to do is just listen to a</p> <p>22 brief snippet and he'll understand</p> <p>23 what is going on --</p> <p>24 MR. MELITO: He does not need</p> <p>25 to listen -- for proper context, he</p>
<p style="text-align: right;">78</p> <p>1 D. KEKANA</p> <p>2 Davis and perhaps the other</p> <p>3 defendants will join, our position is</p> <p>4 that this deposition should be</p> <p>5 suspended until we can get some type</p> <p>6 of decision based upon papers.</p> <p>7 CHAMBER SECRETARY: Understood.</p> <p>8 So Defense Counsel believes that the</p> <p>9 deposition should be suspended until</p> <p>10 ruling submitted on paper and</p> <p>11 Plaintiff's Counsel would like the</p> <p>12 deposition to go forward and would</p> <p>13 like Judge Daniels to join on the</p> <p>14 line and listen to the read back of</p> <p>15 testimony because defense has been</p> <p>16 obstructing the deposition; is that</p> <p>17 correct?</p> <p>18 MR. SELLS: Correct. Yes.</p> <p>19 MR. MELITO: Again, this is</p> <p>20 Defense Counsel for F.I.T. We'll be</p> <p>21 here all day if we are going to have</p> <p>22 to read the record back to Judge</p> <p>23 Daniels because it's Plaintiff's</p> <p>24 behavior that is what prompted the</p> <p>25 call, and that's why we think it is</p>	<p style="text-align: right;">80</p> <p>1 D. KEKANA</p> <p>2 needs to read way more than just two</p> <p>3 pages of transcript. Again, we are</p> <p>4 saying the best course of action in</p> <p>5 the interest of Judge Daniel's time</p> <p>6 is to submit papers.</p> <p>7 CHAMBER SECRETARY: Understood.</p> <p>8 Is there anything else the parties</p> <p>9 would like to relay?</p> <p>10 MR. MELITO: Not at this time,</p> <p>11 thank you.</p> <p>12 CHAMBER SECRETARY: Okay. I</p> <p>13 will relay that to Judge Daniels and</p> <p>14 return your call. Thank you.</p> <p>15 MR. MELITO: Thank you.</p> <p>16 Court's clerk disconnected the</p> <p>17 call, and she will call us back when</p> <p>18 there is a ruling.</p> <p>19 MR. MELITO: Judges chambers is</p> <p>20 calling.</p> <p>21 CHAMBER SECRETARY: Calling</p> <p>22 from Judge Daniels chambers.</p> <p>23 MR. MELITO: Yes, how are you?</p> <p>24 I'm waiting for Plaintiff's Counsel</p> <p>25 to come on my screen for the Zoom.</p>

<p style="text-align: right;">81</p> <p>1 D. KEKANA</p> <p>2 Okay, he is here. Are we allowed to</p> <p>3 go on the record for the ruling?</p> <p>4 CHAMBER SECRETARY: No, I'm a</p> <p>5 law clerk. Go off the record.</p> <p>6 (Whereupon, an off-the-record</p> <p>7 discussion was held; after which, at</p> <p>8 12:24 p.m. the proceeding continued</p> <p>9 as follows.)</p> <p>10 MR. MELITO: I'm going to pop</p> <p>11 out and get the witness out of the</p> <p>12 breakout room.</p> <p>13 MR. SELLS: Are we ready?</p> <p>14 MR. MELITO: Yes.</p> <p>15 Q. Ms. Kekana, we were talking about</p> <p>16 the complaint process as it relates to</p> <p>17 complaints of discrimination made by an</p> <p>18 employee that are investigated by your</p> <p>19 office.</p> <p>20 My next question is, When an</p> <p>21 employee at F.I.T. makes a complaint of</p> <p>22 retaliation, does it go to your office as</p> <p>23 well?</p> <p>24 A. If it relates to a complaint, the</p> <p>25 retaliation is because of a complaint filed</p>	<p style="text-align: right;">83</p> <p>1 D. KEKANA</p> <p>2 Is there any exceptions to that?</p> <p>3 A. The exceptions would be if the</p> <p>4 claims of retaliation are not related to my</p> <p>5 office.</p> <p>6 Q. Got it.</p> <p>7 But that would be the only</p> <p>8 exception, correct?</p> <p>9 A. Correct --</p> <p>10 MR. MELITO: Objection.</p> <p>11 Q. All right.</p> <p>12 Now, how does your office -- if</p> <p>13 there is a situation where there is an</p> <p>14 underlying complaint of discrimination made</p> <p>15 and subsequent to that complaint being made by</p> <p>16 an employee against another employee the</p> <p>17 employee complains that they have been</p> <p>18 subjected to retaliation, would those two</p> <p>19 complaints be investigated as part of one</p> <p>20 complaint or would there be two separate</p> <p>21 investigations?</p> <p>22 A. If the complaint of retaliation is</p> <p>23 in relation to an investigation under the</p> <p>24 non-discrimination and antiharassment</p> <p>25 complaint, it would be conducted through the</p>
<p style="text-align: right;">82</p> <p>1 D. KEKANA</p> <p>2 with my office, it would be investigated by</p> <p>3 my office --</p> <p>4 Q. Got it --</p> <p>5 A. -- if it relates to something</p> <p>6 different, it would not.</p> <p>7 THE WITNESS: My screen froze</p> <p>8 after I gave my answer, so I don't</p> <p>9 know if it happened to anyone else.</p> <p>10 (Whereupon, the requested</p> <p>11 portion of the transcript was read</p> <p>12 back.)</p> <p>13 Q. Just so I understand, if an employee</p> <p>14 makes a complaint of discrimination against</p> <p>15 another employee that your office, the</p> <p>16 Affirmative Action Office investigates, if</p> <p>17 that same employee makes a complaint of</p> <p>18 retaliation against one of the people that</p> <p>19 the complaint was made against, your office</p> <p>20 would investigate that complaint of</p> <p>21 retaliation as well; is that correct?</p> <p>22 A. If the retaliation is in regards to</p> <p>23 their participation in the investigation, my</p> <p>24 office conducts it.</p> <p>25 Q. Got it.</p>	<p style="text-align: right;">84</p> <p>1 D. KEKANA</p> <p>2 same investigation.</p> <p>3 Q. Got it.</p> <p>4 And what is the process after an</p> <p>5 investigation of a complaint of</p> <p>6 discrimination and/or retaliation is</p> <p>7 finished, what is your office's</p> <p>8 responsibility assuming your office did it?</p> <p>9 A. To communicate in writing, not only</p> <p>10 in writing but also verbally, the outcome of</p> <p>11 the investigation to Complainant and</p> <p>12 Respondent parties.</p> <p>13 Q. Is there any exception to that?</p> <p>14 A. I cannot think of one at this time.</p> <p>15 Q. Got it.</p> <p>16 So according to you, if an employee</p> <p>17 makes a complaint of discrimination at F.I.T.</p> <p>18 against another employee and subsequently</p> <p>19 makes a complaint of retaliation against that</p> <p>20 same employee, your office, if you got both</p> <p>21 complaints, would investigate both and write</p> <p>22 a concluding summary for both of those</p> <p>23 complaints as part of a single investigation,</p> <p>24 correct?</p> <p>25 MR. MELITO: Objection --</p>

<p style="text-align: right;">85</p> <p>1 D. KEKANA</p> <p>2 A. If the complaint of retaliation were</p> <p>3 related to the complaint of discrimination,</p> <p>4 yes.</p> <p>5 Q. Got it.</p> <p>6 Now, who makes the determination</p> <p>7 about whether a complaint of retaliation made</p> <p>8 by an employee against another employee is</p> <p>9 related to the complaint of discrimination</p> <p>10 that's made by the same employee against the</p> <p>11 same employee? Who makes that decision?</p> <p>12 A. That is a dem- -- a determination</p> <p>13 that is made in conjunction with various</p> <p>14 offices around the college to determine based</p> <p>15 on the context and information available</p> <p>16 about the behavior that is retaliatory.</p> <p>17 Q. Got it --</p> <p>18 MR. DRANOFF: Just to</p> <p>19 interrupt, can you let me back into</p> <p>20 the room?</p> <p>21 (Whereupon, Mr. Dranoff returns.)</p> <p>22 Q. Now, Ms. Kekana, you said the</p> <p>23 decision about whether an employee's</p> <p>24 complaint of retaliation is in fact connected</p> <p>25 to that employee's complaint of</p>	<p style="text-align: right;">87</p> <p>1 D. KEKANA</p> <p>2 same employee who made the discrimination</p> <p>3 complaint complains about retaliation against</p> <p>4 the same employee that they made the</p> <p>5 complaint of discrimination against, who</p> <p>6 makes the decision about whether the</p> <p>7 complaint of retaliation is associated with</p> <p>8 the complaint of discrimination?</p> <p>9 A. That would be made between my office</p> <p>10 and the office of Human Resources.</p> <p>11 Q. And who within the Office of Human</p> <p>12 Resources at F.I.T. would be responsible for</p> <p>13 communicating with you to make the</p> <p>14 determination?</p> <p>15 A. The vice president of human</p> <p>16 resources.</p> <p>17 Q. And who is that person?</p> <p>18 A. At the current time, Ms. Cynthia</p> <p>19 Glass.</p> <p>20 Q. And how long has Cynthia Glass been</p> <p>21 in that position?</p> <p>22 A. Since 2019, I believe.</p> <p>23 Q. When in 2019?</p> <p>24 A. I don't recall.</p> <p>25 Q. And who before Cynthia Glass was in</p>
<p style="text-align: right;">86</p> <p>1 D. KEKANA</p> <p>2 discrimination that that is a collective</p> <p>3 determination between your office and others.</p> <p>4 Can you tell me who the "others" are?</p> <p>5 A. As I said before, it determine --</p> <p>6 it's based on the context. If we are talking</p> <p>7 about a student in a department versus a</p> <p>8 grade and they are saying that their grade</p> <p>9 was retaliatory, that would include the VP of</p> <p>10 Academic Affairs and possibly the department</p> <p>11 chairperson in making that determination</p> <p>12 because it may not be -- come under the</p> <p>13 auspicious of discrimination. It may come --</p> <p>14 it may also include the Dean of Students</p> <p>15 Office. It may also include Human Resources</p> <p>16 Office.</p> <p>17 Q. What I'm talking about specifically</p> <p>18 though is a complaint, a discrimination</p> <p>19 complaint made by one employee against</p> <p>20 another employee. I'm not talking about</p> <p>21 students --</p> <p>22 A. Mm-hmm --</p> <p>23 Q. In a situation where you have an</p> <p>24 employee making a complaint of discrimination</p> <p>25 against another employee and subsequently the</p>	<p style="text-align: right;">88</p> <p>1 D. KEKANA</p> <p>2 that position?</p> <p>3 A. That would have been -- the interim</p> <p>4 vice president was Eric Hogan.</p> <p>5 Q. And how long was Eric Hogan in that</p> <p>6 position?</p> <p>7 A. I don't recall how long he was in</p> <p>8 the position.</p> <p>9 Q. Now, this notion that your office in</p> <p>10 conjunction with HR would determine whether</p> <p>11 or not a complaint of retaliation by an</p> <p>12 employee against another employee is related</p> <p>13 or not related to a complaint of</p> <p>14 discrimination by the same employee against</p> <p>15 the same employee, where is that policy</p> <p>16 located that you have to collaborate to</p> <p>17 determine that? Where is that located?</p> <p>18 A. That's not part of any policy that I</p> <p>19 am aware of.</p> <p>20 Q. Oh, it's not. Okay.</p> <p>21 So when did that come up? When did</p> <p>22 that have to come up that you have to confer</p> <p>23 with HR in order to decide whether or not</p> <p>24 there's a connection between the complaint of</p> <p>25 retaliation and discrimination?</p>

<p style="text-align: right;">89</p> <p>1 D. KEKANA</p> <p>2 A. That is a practice that the office</p> <p>3 has utilized the entire time that I have been</p> <p>4 here.</p> <p>5 Q. And it is not written down anywhere;</p> <p>6 is that correct?</p> <p>7 MR. MELITO: Objection. Go</p> <p>8 ahead. You can answer.</p> <p>9 A. That is correct.</p> <p>10 Q. Where did you learn this policy</p> <p>11 from?</p> <p>12 A. Well, this is not a policy. This is</p> <p>13 a practice. It is based on a number of</p> <p>14 things including our campus culture, past</p> <p>15 practice on our campus culture as well as</p> <p>16 some best practice advice that we have</p> <p>17 received.</p> <p>18 Q. And none of this has been written</p> <p>19 down anywhere; is that correct?</p> <p>20 MR. MELITO: Objection --</p> <p>21 Q. -- what you have just described as</p> <p>22 like "campus culture, best practices" and all</p> <p>23 the other things that you have just mentioned</p> <p>24 that went into this "practice" that you have</p> <p>25 been following, none of it is written</p>	<p style="text-align: right;">91</p> <p>1 D. KEKANA</p> <p>2 Is F.I.T.'s policy that an employee</p> <p>3 that makes a complaint of discrimination and</p> <p>4 retaliation could have the complaint of</p> <p>5 discrimination not substantiated but have the</p> <p>6 complaint of retaliation substantiated?</p> <p>7 MR. MELITO: Objection. You</p> <p>8 can answer.</p> <p>9 A. Yes, that's possible.</p> <p>10 Q. And who makes that decision?</p> <p>11 A. That can be -- I mean, that would be</p> <p>12 multiple people potentially or it could be</p> <p>13 the same person potentially.</p> <p>14 So, if the complaint of retaliation</p> <p>15 is in regards to someone's participation in a</p> <p>16 complaint of discrimination and we then</p> <p>17 investigate a complaint of retaliation and</p> <p>18 find that there was retaliation because of</p> <p>19 someone's participation in a complaint of</p> <p>20 discrimination, that could all be within the</p> <p>21 Office of Affirmative Action.</p> <p>22 If the retaliation is based on</p> <p>23 something else, it could be a decision that's</p> <p>24 made by a different office.</p> <p>25 Q. And again, that's that morphous</p>
<p style="text-align: right;">90</p> <p>1 D. KEKANA</p> <p>2 anywhere; is that correct?</p> <p>3 MR. MELITO: Objection. You</p> <p>4 can answer.</p> <p>5 A. Not to my knowledge.</p> <p>6 Q. And so, who came up with this</p> <p>7 practice? What person?</p> <p>8 A. I don't know.</p> <p>9 Q. What is your understanding of the</p> <p>10 difference between a complaint of</p> <p>11 discrimination versus a complaint of</p> <p>12 retaliation?</p> <p>13 A. A complaint of retaliation involves</p> <p>14 an added layer of dissuading or otherwise</p> <p>15 punishing someone for participating in good</p> <p>16 faith in a complaint process.</p> <p>17 Q. Now under F.I.T.'s policies, can one</p> <p>18 person make a complaint of discrimination</p> <p>19 that is deemed unfounded but a subsequent</p> <p>20 complaint of retaliation based upon that</p> <p>21 original complaint could be substantiated --</p> <p>22 MR. MELITO: Objection.</p> <p>23 Q. Do you understand the question?</p> <p>24 A. Can you repeat the question, please.</p> <p>25 Q. Yes.</p>	<p style="text-align: right;">92</p> <p>1 D. KEKANA</p> <p>2 policy F.I.T. has that is not written down</p> <p>3 anywhere about whether or not your office</p> <p>4 will deem or HR and your office will deem a</p> <p>5 retaliation complaint associated with a</p> <p>6 discrimination complaint made by an employee,</p> <p>7 right?</p> <p>8 A. Correct.</p> <p>9 MR. MELITO: Objection.</p> <p>10 Q. Now, what is F.I.T.'s policy about</p> <p>11 the length of time it's supposed to take for</p> <p>12 an investigation to conclude?</p> <p>13 A. F.I.T. does not have a defined</p> <p>14 length of time for an investigation to be</p> <p>15 concluded.</p> <p>16 Q. All right.</p> <p>17 But --</p> <p>18 A. -- policy.</p> <p>19 Q. But what's your understanding of it;</p> <p>20 what is the length of time that you give your</p> <p>21 investigators or yourself to investigate a</p> <p>22 claim or a complaint of discrimination?</p> <p>23 MR. MELITO: Objection. You</p> <p>24 can answer.</p> <p>25 A. I endeavor to complete an</p>

<p style="text-align: right;">93</p> <p>1 D. KEKANA</p> <p>2 investigation between 45 to 60 days; that is</p> <p>3 not always possible for various reasons that</p> <p>4 can happen.</p> <p>5 Q. So, you try and give yourself 45 to</p> <p>6 60 days; is that correct?</p> <p>7 A. That is correct.</p> <p>8 Q. Why do you give yourself that much</p> <p>9 time?</p> <p>10 A. Ultimately, to have it effected as</p> <p>11 quickly as possible.</p> <p>12 Q. And do you give priority to</p> <p>13 investigations or is there a policy where you</p> <p>14 give certain time for certain complaints and</p> <p>15 different times for other complaints?</p> <p>16 MR. MELITO: Objection. You</p> <p>17 can answer.</p> <p>18 A. I endeavor in all complaints to</p> <p>19 investigate them in that timeframe. However,</p> <p>20 when it comes to concluding investigations</p> <p>21 there are certain types of investigations</p> <p>22 that do take priority over other types of</p> <p>23 investigations. Yes.</p> <p>24 Q. Tell me what it is; what is the</p> <p>25 policy in terms of what investigations get</p>	<p style="text-align: right;">95</p> <p>1 D. KEKANA</p> <p>2 MR. MELITO: Objection.</p> <p>3 A. I don't investigate threats to kill</p> <p>4 unless they are discriminatory in nature.</p> <p>5 Q. What about if they are retaliatory</p> <p>6 in nature?</p> <p>7 MR. MELITO: Objection.</p> <p>8 A. I think I have answered this</p> <p>9 question already.</p> <p>10 Q. No, you haven't --</p> <p>11 MR. MELITO: Objection.</p> <p>12 Q. I see you are smiling; is there</p> <p>13 something funny?</p> <p>14 MR. MELITO: Objection. No,</p> <p>15 she is not smiling.</p> <p>16 MR. SELLS: She is not?</p> <p>17 Q. Are you smiling right now,</p> <p>18 Ms. Kekana?</p> <p>19 A. No, I'm waiting to hear what you</p> <p>20 guys are talking about so I can answer.</p> <p>21 That's my resting face. I said that several</p> <p>22 times to --</p> <p>23 Q. That's your resting face --</p> <p>24 A. That's just how my face looks.</p> <p>25 MR. MELITO: Can we note that</p>
<p style="text-align: right;">94</p> <p>1 D. KEKANA</p> <p>2 priority over other investigations?</p> <p>3 MR. MELITO: Objection. You</p> <p>4 can answer.</p> <p>5 A. This isn't policy. This is</p> <p>6 something that my office determines based on</p> <p>7 the types of investigations we're conducting.</p> <p>8 For example, an investigation that involves</p> <p>9 sexual assault, particularly violent sexual</p> <p>10 assault, will take priority over another type</p> <p>11 of investigation just because of the violent</p> <p>12 nature in addition, you know.</p> <p>13 Q. Sexual assault. What about</p> <p>14 attempted murder?</p> <p>15 MR. MELITO: Objection. You</p> <p>16 can answer.</p> <p>17 A. I have not investigated attempted</p> <p>18 murder.</p> <p>19 Q. Even if it is part of a retaliation</p> <p>20 complaint?</p> <p>21 MR. MELITO: Objection.</p> <p>22 A. I don't investigate attempted</p> <p>23 murder.</p> <p>24 Q. What about threats to kill as part</p> <p>25 of a retaliation claim?</p>	<p style="text-align: right;">96</p> <p>1 D. KEKANA</p> <p>2 for the record if it is possible, the</p> <p>3 misconduct by Derek Sells. I may</p> <p>4 have to go back to that in a</p> <p>5 forthcoming sanctions motion, if</p> <p>6 necessary.</p> <p>7 Q. Ms. Kekana, I'm asking it in terms</p> <p>8 of a potential retaliation investigation</p> <p>9 where it is alleged that an employee who made</p> <p>10 a complaint against another employee of</p> <p>11 discrimination and subsequently that employee</p> <p>12 who was the subject of the complaint of</p> <p>13 discrimination threatens to kill the person</p> <p>14 who made the complaint, would your office be</p> <p>15 responsible for investigating that complaint</p> <p>16 of retaliation?</p> <p>17 MR. MELITO: Objection.</p> <p>18 A. If it were deemed to be retaliatory</p> <p>19 on a discriminatory basis.</p> <p>20 Q. Got it.</p> <p>21 So we get back to that morpheous</p> <p>22 policy between HR and the Affirmative Action</p> <p>23 Office about whether you're going to</p> <p>24 determine the retaliation complaint</p> <p>25 associated with the discrimination complaint;</p>

<p style="text-align: right;">97</p> <p>1 D. KEKANA</p> <p>2 is that correct?</p> <p>3 MR. MELITO: Objection.</p> <p>4 A. That is correct.</p> <p>5 Q. Got it.</p> <p>6 So now in terms of this whole how</p> <p>7 you prioritize your investigative work, when</p> <p>8 do you complete an investigation such that</p> <p>9 you can then implement disciplinary measures;</p> <p>10 how long does it take --</p> <p>11 MR. MELITO: Objection --</p> <p>12 A. -- my office does not implement</p> <p>13 discipline.</p> <p>14 Q. I'm sorry?</p> <p>15 A. I don't implement discipline.</p> <p>16 Q. Do you recommend discipline?</p> <p>17 A. No, I do not.</p> <p>18 Q. Who does?</p> <p>19 A. The Office of Human Resources</p> <p>20 conducts our disciplinary process.</p> <p>21 Q. Got it.</p> <p>22 So you just submit your</p> <p>23 investigative results to HR; is that the</p> <p>24 process?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">99</p> <p>1 D. KEKANA</p> <p>2 with the college.</p> <p>3 Q. I know. But why?</p> <p>4 A. I'm not --</p> <p>5 MR. MELITO: Objection --</p> <p>6 A. -- of the reason.</p> <p>7 MR. MELITO: Sorry. If you</p> <p>8 could just pause --</p> <p>9 Q. You are not aware of the reason?</p> <p>10 MR. MELITO: Can you just pause</p> <p>11 before you answer so I could raise my</p> <p>12 objections. Thank you.</p> <p>13 This is outside the scope of a</p> <p>14 30(b)(6), so any answer will be in a</p> <p>15 personal capacity.</p> <p>16 MR. SELLS: This goes to her</p> <p>17 personal knowledge. This goes to her</p> <p>18 personal knowledge.</p> <p>19 MR. MELITO: That's what I just</p> <p>20 said.</p> <p>21 MR. SELLS: Okay, good.</p> <p>22 Q. So, you're saying that you have no</p> <p>23 idea why Mary Davis is no longer with F.I.T.;</p> <p>24 is that your honest answer?</p> <p>25 A. That is my honest answer.</p>
<p style="text-align: right;">98</p> <p>1 D. KEKANA</p> <p>2 Q. And then HR decides what they're</p> <p>3 going to do with it; is that correct?</p> <p>4 A. That is correct.</p> <p>5 Q. Got it.</p> <p>6 So if you do not give HR the results</p> <p>7 of your investigation and if HR doesn't do</p> <p>8 the investigation themselves, then HR cannot</p> <p>9 take any disciplinary measures until after</p> <p>10 you've concluded your investigation; is that</p> <p>11 correct?</p> <p>12 MR. MELITO: Objection.</p> <p>13 A. That is to my knowledge, yes.</p> <p>14 Q. Got it.</p> <p>15 Do you know who Mary Davis is?</p> <p>16 A. Yes.</p> <p>17 Q. How do you know Mary Davis?</p> <p>18 A. Mary Davis served as the dean for</p> <p>19 the graduate school at the college.</p> <p>20 Q. Does Mary Davis still serve as a</p> <p>21 dean at F.I.T.?</p> <p>22 A. No.</p> <p>23 Q. Why not?</p> <p>24 MR. MELITO: Objection.</p> <p>25 A. As I understand it, she is no longer</p>	<p style="text-align: right;">100</p> <p>1 D. KEKANA</p> <p>2 Q. So, you have not read any newspaper</p> <p>3 articles about it?</p> <p>4 MR. MELITO: Objection.</p> <p>5 A. I have not read any newspaper</p> <p>6 articles about her termination or anything of</p> <p>7 the like. I do know there was a reference to</p> <p>8 her being placed on administrative leave. I</p> <p>9 believe I read that in the New York Post.</p> <p>10 Q. Put on administrative leave --</p> <p>11 A. Correct --</p> <p>12 Q. -- for what? My question to you is,</p> <p>13 What was your understanding of why she is no</p> <p>14 longer at the college?</p> <p>15 MR. MELITO: Objection.</p> <p>16 A. To my knowledge, there was an</p> <p>17 incident that happened at a graduate fashion</p> <p>18 show. While it was being investigated, Mary</p> <p>19 Davis was placed on administrative leave. I</p> <p>20 don't know what happened as a result of that</p> <p>21 investigation. I was not part of that</p> <p>22 investigation. I only know she is no longer</p> <p>23 here because I work here, and I know that she</p> <p>24 is not on e-mails.</p> <p>25 MR. SELLS: Can we pull up and</p>

<p style="text-align: right;">101</p> <p>1 D. KEKANA</p> <p>2 mark Exhibit 31.</p> <p>3 (Whereupon, Plaintiff's Exhibit</p> <p>4 31, New York Times article dated</p> <p>5 February 23rd of 2020, was marked for</p> <p>6 identification as of this date.)</p> <p>7 (Counsel is sharing the</p> <p>8 computer screen image.)</p> <p>9 MR. MELITO: Just for the</p> <p>10 record, we will keep this as</p> <p>11 Plaintiff's Exhibit 31.</p> <p>12 MR. SELLS: For the record --</p> <p>13 Exhibit 31 for the record is a New</p> <p>14 York Times article dated February</p> <p>15 23rd of 2020. It is entitled "F.I.T.</p> <p>16 model refuses to wear clearly racist</p> <p>17 accessories."</p> <p>18 Q. Have you seen this before,</p> <p>19 Ms. Kekana?</p> <p>20 A. I don't think I've seen this</p> <p>21 specific one; but I do recall media at that</p> <p>22 time that went out about this --</p> <p>23 Q. Got it --</p> <p>24 A. -- so I do know the incident.</p> <p>25 Q. So, were you familiar with a</p>	<p style="text-align: right;">103</p> <p>1 D. KEKANA</p> <p>2 A. Yes.</p> <p>3 Q. And that "failed to recognize or</p> <p>4 anticipate the racist references and cultural</p> <p>5 insensitivities that were obvious to almost</p> <p>6 everybody else."</p> <p>7 Do you see that language?</p> <p>8 A. Yes.</p> <p>9 Q. All right.</p> <p>10 And did you read that public letter</p> <p>11 from your --</p> <p>12 MR. MELITO: Objection --</p> <p>13 Q. -- from your president?</p> <p>14 A. Yes.</p> <p>15 Q. I see.</p> <p>16 But you said that before you had no</p> <p>17 idea why Mary Davis was no longer at that the</p> <p>18 college, right? Wasn't that your original</p> <p>19 answer? I have no idea why she is not there;</p> <p>20 didn't you say --</p> <p>21 MR. MELITO: Objection --</p> <p>22 Q. -- say that before, Ms. Kekana?</p> <p>23 MR. MELITO: Objection.</p> <p>24 MR. DRANOFF: Objection as</p> <p>25 well.</p>
<p style="text-align: right;">102</p> <p>1 D. KEKANA</p> <p>2 complaint that was made by a model, an</p> <p>3 African-American model who refused to</p> <p>4 participate in this fashion show because it</p> <p>5 was racist?</p> <p>6 MR. MELITO: Objection.</p> <p>7 A. I learned about -- I did not receive</p> <p>8 a complaint; but I learned about the incident</p> <p>9 when I was forwarded an article, as I said,</p> <p>10 from the New York Post that they had</p> <p>11 interviewed the model.</p> <p>12 Q. All right.</p> <p>13 Well if you could see from this</p> <p>14 newspaper, it says "in a public letter the</p> <p>15 school's President, Dr. Joyce Brown --" do you</p> <p>16 know her, Joyce Brown?</p> <p>17 A. Yes.</p> <p>18 Q. And who is she?</p> <p>19 A. She serves as the president of the</p> <p>20 college.</p> <p>21 Q. Okay.</p> <p>22 So, she said in a public letter that</p> <p>23 "the February 7th show intended to demonstrate</p> <p>24 the work of recent graduates."</p> <p>25 You see that, right; that section?</p>	<p style="text-align: right;">104</p> <p>1 D. KEKANA</p> <p>2 A. To clarify my answer, I was made</p> <p>3 aware that she was placed on administrative</p> <p>4 leave as a result of this show. I do not</p> <p>5 know what happened after that. As I</p> <p>6 understand it, it was during the</p> <p>7 investigation of this show.</p> <p>8 I don't know why ultimately she was</p> <p>9 no longer with us. There was no</p> <p>10 announcement, there was no letter that went</p> <p>11 out about her separation from the college. I</p> <p>12 only learned this when there was no longer an</p> <p>13 e-mail available for her.</p> <p>14 Q. I see.</p> <p>15 So your office, the Office of</p> <p>16 Affirmative Action, did not get to</p> <p>17 investigate a complaint of racist behavior by</p> <p>18 Dean Davis?</p> <p>19 MR. MELITO: Objection.</p> <p>20 MR. DRANOFF: Wait a minute.</p> <p>21 There is no complaint of racist</p> <p>22 behavior by Dean Davis. Objection.</p> <p>23 MR. SELLS: Oh, is that right?</p> <p>24 MR. DRANOFF: There's nothing</p> <p>25 in hear suggests that.</p>

<p style="text-align: right;">105</p> <p>1 D. KEKANA</p> <p>2 MR. SELLS: Nothing? Huh.</p> <p>3 Q. Well, have you seen the complaint</p> <p>4 that Dean Davis filed against F.I.T. where</p> <p>5 she specifically says that she was disparaged</p> <p>6 because the school referred to her as being</p> <p>7 racist? Did you not see that complaint,</p> <p>8 Ms. Kekana --</p> <p>9 MR. MELITO: Objection.</p> <p>10 Objection.</p> <p>11 MR. DRANOFF: I'm not under the</p> <p>12 -- go ahead, Nicholas.</p> <p>13 MR. MELITO: Sorry. I'm not</p> <p>14 sure who he is directing his question</p> <p>15 to in that regard. Again, this is</p> <p>16 outside the scope of 30(b)(6). This</p> <p>17 is personal capacity. Go ahead,</p> <p>18 Eric, if you had an objection.</p> <p>19 MR. DRANOFF: I was just going</p> <p>20 to say that this is --</p> <p>21 MR. SELLS: No. No. No.</p> <p>22 Wait. Wait. Why are we doing</p> <p>23 speaking objections? What are we</p> <p>24 talking about?</p> <p>25 MR. DRANOFF: You asked me --</p>	<p style="text-align: right;">107</p> <p>1 D. KEKANA</p> <p>2 February 18th, 2020, was marked for</p> <p>3 identification as of this date.)</p> <p>4 (Counsel is sharing the</p> <p>5 computer screen image.)</p> <p>6 MR. SELLS: For the record</p> <p>7 Exhibit 32 is a February 18th, 2020</p> <p>8 news article from the New York Post</p> <p>9 with a picture beneath a caption</p> <p>10 saying "F.I.T. apologizes for clearly</p> <p>11 racist alumni fashion show".</p> <p>12 Q. Have you seen this article,</p> <p>13 Ms. Kekana?</p> <p>14 MR. MELITO: Objection. You</p> <p>15 can answer.</p> <p>16 MR. DRANOFF: I join.</p> <p>17 A. I believe this is the article that I</p> <p>18 viewed. I know there was other ones; but I</p> <p>19 know I did view a New York Post article about</p> <p>20 the fashion show. I don't -- I'm not certain</p> <p>21 if it was this specific one because I don't</p> <p>22 recognize this title.</p> <p>23 Q. All right.</p> <p>24 Did you investigate the complaint of</p> <p>25 a clearly racist alumni fashion show that took</p>
<p style="text-align: right;">106</p> <p>1 D. KEKANA</p> <p>2 MR. SELLS: I just asked a</p> <p>3 simple question, Are you aware that</p> <p>4 Dean Davis sued F.I.T. claiming that</p> <p>5 the statement by Joyce Brown, the</p> <p>6 president, disparaged her by</p> <p>7 referring to her as being racist and</p> <p>8 that she's demanding hundreds of</p> <p>9 millions of dollars because she was</p> <p>10 defamed; are you aware of that that</p> <p>11 is my question.</p> <p>12 MR. DRANOFF: Question to me?</p> <p>13 Who is that question to?</p> <p>14 MR. SELLS: No, my question to</p> <p>15 Ms. Kekana --</p> <p>16 A. I am not aware --</p> <p>17 Q. You are not aware?</p> <p>18 MR. DRANOFF: I'll --</p> <p>19 MR. MELITO: I'll raise an</p> <p>20 objection to that question, but</p> <p>21 continue.</p> <p>22 MR. SELLS: Can we put up</p> <p>23 Exhibit 32.</p> <p>24 (Whereupon, Plaintiff's Exhibit</p> <p>25 32, New York Post article dated</p>	<p style="text-align: right;">108</p> <p>1 D. KEKANA</p> <p>2 place at F.I.T.? Did you investigate that --</p> <p>3 MR. MELITO: Objection --</p> <p>4 Q. Did you investigate or your --</p> <p>5 MR. DRANOFF: Objection --</p> <p>6 Q. -- your office?</p> <p>7 A. I would like to clarify two things</p> <p>8 you said that were incorrect. The first is</p> <p>9 there was a complaint made to F.I.T.; there</p> <p>10 was no complaint made to F.I.T. We first</p> <p>11 learned about the complaint via the New York</p> <p>12 Post; so there was not a complaint lodged</p> <p>13 with F.I.T.</p> <p>14 The second part that I want to</p> <p>15 clarify as incorrect is that you stated that</p> <p>16 this alumni fashion show took place at</p> <p>17 F.I.T.; to my knowledge, this did not take</p> <p>18 place on campus.</p> <p>19 Q. Well, how did you learn that?</p> <p>20 A. I actually learned this from the</p> <p>21 newspaper article.</p> <p>22 Q. I see.</p> <p>23 So what was F.I.T.'s involvement in</p> <p>24 this fashion show?</p> <p>25 MR. MELITO: Objection.</p>

<p style="text-align: right;">109</p> <p>1 D. KEKANA</p> <p>2 Outside the scope. This is in your</p> <p>3 personal capacity.</p> <p>4 A. I can refer to things that I learned</p> <p>5 from the article. I don't have knowledge;</p> <p>6 but as I understand it, this was a show or</p> <p>7 fashion show for recent F.I.T. graduates that</p> <p>8 was put on.</p> <p>9 Q. That was clearly racist, right?</p> <p>10 MR. MELITO: Objection.</p> <p>11 MR. DRANOFF: Objection.</p> <p>12 Q. You could answer.</p> <p>13 MR. MELITO: I don't know if</p> <p>14 that was a question. Objection.</p> <p>15 A. Is there a question? I'm sorry.</p> <p>16 Can you repeat it?</p> <p>17 Q. The fashion show was clearly racist,</p> <p>18 correct?</p> <p>19 MR. MELITO: Objection.</p> <p>20 MR. DRANOFF: Objection.</p> <p>21 A. Are you asking for my opinion?</p> <p>22 Q. Yes.</p> <p>23 MR. MELITO: Objection.</p> <p>24 A. There is imagery here that is a</p> <p>25 minstrel in nature and is discriminatory.</p>	<p style="text-align: right;">111</p> <p>1 D. KEKANA</p> <p>2 country but throughout the world,</p> <p>3 specifically Asian people and black people.</p> <p>4 Q. Okay.</p> <p>5 As you look at the picture that is</p> <p>6 part of Exhibit 32, what in particular would</p> <p>7 you characterize as being minstrel in nature</p> <p>8 and clearly racist --</p> <p>9 MR. MELITO: Objection.</p> <p>10 Objection.</p> <p>11 Q. -- what?</p> <p>12 A. In my personal opinion, the</p> <p>13 accessory of the lips and the accessory of</p> <p>14 the large ears appears minstrel in nature.</p> <p>15 Q. All right.</p> <p>16 MR. SELLS: We could take that</p> <p>17 down. Thank you.</p> <p>18 Q. Now in determining whether or not an</p> <p>19 individual who has been complained about as</p> <p>20 being or having done something of a racist</p> <p>21 nature, do you look at that person, the</p> <p>22 person whose been complained about, do you</p> <p>23 look at whether or not there's evidence of a</p> <p>24 discriminatory motive or a discriminatory</p> <p>25 history as it relates to the complaint?</p>
<p style="text-align: right;">110</p> <p>1 D. KEKANA</p> <p>2 Q. When you say "discriminatory," is it</p> <p>3 to you "clearly racist"?</p> <p>4 MR. MELITO: Objection.</p> <p>5 Again, this is outside the</p> <p>6 scope of the 30(b) (6) and objection</p> <p>7 to the form as well.</p> <p>8 MR. DRANOFF: Join.</p> <p>9 MR. MELITO: I'll have standing</p> <p>10 objection as outside the scope of the</p> <p>11 30(b) (6). I'll just raise objections</p> <p>12 to form so not to keep interrupting</p> <p>13 you, Derek; if that is okay with you.</p> <p>14 Q. Please answer the question.</p> <p>15 A. Okay. I would -- I would</p> <p>16 characterize this in my personal opinion as</p> <p>17 racist. Yes.</p> <p>18 Q. And why?</p> <p>19 A. This is --</p> <p>20 MR. MELITO: Objection --</p> <p>21 A. In my opinion, this is imagery that</p> <p>22 has been historically used to -- in</p> <p>23 propaganda in discriminatory fashions and,</p> <p>24 again, minstrel imagery against many</p> <p>25 different races of people not only in this</p>	<p style="text-align: right;">112</p> <p>1 D. KEKANA</p> <p>2 MR. MELITO: Objection. You</p> <p>3 have --</p> <p>4 MR. DRANOFF: Objection.</p> <p>5 MR. MELITO: I'm going to say</p> <p>6 again this is outside the scope of</p> <p>7 the 30(b) (6) .</p> <p>8 MR. SELLS: This goes to the</p> <p>9 investigation. I'm just asking about</p> <p>10 the investigation --</p> <p>11 MR. MELITO: It wasn't clear --</p> <p>12 MR. SELLS: Excuse me. Let me --</p> <p>13 I'll make it very clear.</p> <p>14 Q. As part of your practice of</p> <p>15 investigating complaints of discrimination,</p> <p>16 does F.I.T. look at actions of the F.I.T.</p> <p>17 employee who is being investigated that would</p> <p>18 speak to a discriminatory motive or a</p> <p>19 discriminatory past as it relates to the</p> <p>20 complaint?</p> <p>21 MR. MELITO: Objection.</p> <p>22 A. In an investigation we will look at</p> <p>23 the employee's complete employee concerns;</p> <p>24 their performance, whether it is related to</p> <p>25 discrimination or other sorts of past</p>

<p style="text-align: right;">113</p> <p>1 D. KEKANA</p> <p>2 performance concerns that may be relevant or</p> <p>3 show pattern.</p> <p>4 Q. Got it.</p> <p>5 So let's say that with regard to</p> <p>6 that clearly racist imagery that you have</p> <p>7 described that one or more F.I.T. employees</p> <p>8 who were complained about as having engaged</p> <p>9 in racist behavior or discriminatory behavior</p> <p>10 based on race, would you look at whether or</p> <p>11 not those employees had any role in allowing</p> <p>12 for those clearly racist images to be</p> <p>13 presented --</p> <p>14 MR. DRANOFF: Objection to</p> <p>15 form.</p> <p>16 MR. MELITO: Yeah --</p> <p>17 MR. SELLS: Can you let me</p> <p>18 finish my question. I know you're a</p> <p>19 little bit --</p> <p>20 MR. DRANOFF: Well --</p> <p>21 MR. SELLS: -- nervous now, but</p> <p>22 could you let me finish my question.</p> <p>23 MR. MELITO: Derek, you keep</p> <p>24 breaking up. There is a delay.</p> <p>25 MR. SELLS: Lesley, please read</p>	<p style="text-align: right;">115</p> <p>1 D. KEKANA</p> <p>2 investigation --</p> <p>3 MR. SELLS: The question is</p> <p>4 what it is. Will you stop, please?</p> <p>5 Nicholas, please. I'm begging you.</p> <p>6 MR. MELITO: I'm trying to</p> <p>7 clarify.</p> <p>8 MR. SELLS: Nicholas, let her</p> <p>9 answer the question. You don't have</p> <p>10 to clarify.</p> <p>11 MR. MELITO: I don't even know</p> <p>12 what you're talking about.</p> <p>13 MR. MELITO: Objection to form</p> <p>14 and go ahead.</p> <p>15 A. So, I'm -- I'm -- there are pieces</p> <p>16 of the question that don't apply, so I just</p> <p>17 want to clarify and remind again. As it</p> <p>18 pertains to the investigation of the imagery</p> <p>19 that was presented, that is not an</p> <p>20 investigation that my office conducted. Full</p> <p>21 stop.</p> <p>22 Next, if it is a question of would I</p> <p>23 bring in past information, if I were to be</p> <p>24 the one conducting that investigation, then I</p> <p>25 would answer yes.</p>
<p style="text-align: right;">114</p> <p>1 D. KEKANA</p> <p>2 back what I had before I was</p> <p>3 interrupted.</p> <p>4 (Whereupon, the requested</p> <p>5 portion of the transcript was read</p> <p>6 back.)</p> <p>7 Q. -- publicly?</p> <p>8 MR. MELITO: Are you finished?</p> <p>9 Can we raise objections now?</p> <p>10 MR. SELLS: That was my</p> <p>11 question. Can the witness just</p> <p>12 answer the question?</p> <p>13 MR. DRANOFF: Objection to</p> <p>14 form.</p> <p>15 MR. MELITO: Objection.</p> <p>16 MR. SELLS: All right.</p> <p>17 Objection to form.</p> <p>18 MR. MELITO: Objection also to</p> <p>19 outside the 30(b)(6).</p> <p>20 MR. SELLS: No, this has to do</p> <p>21 with the investigation, but go ahead.</p> <p>22 MR. MELITO: Which</p> <p>23 investigation?</p> <p>24 MR. SELLS: Any investigation.</p> <p>25 MR. MELITO: Okay. If it's any</p>	<p style="text-align: right;">116</p> <p>1 D. KEKANA</p> <p>2 As I answered in my previous</p> <p>3 response, I would -- whenever there is an</p> <p>4 investigation, we do bring in past</p> <p>5 performance of the Respondent employee.</p> <p>6 MR. MELITO: Ms. Kekana, just</p> <p>7 because of the technical issues that</p> <p>8 Derek is having, please just pause so</p> <p>9 Counsel can raise objections when</p> <p>10 necessary. Okay?</p> <p>11 THE WITNESS: Yes, I'm sorry.</p> <p>12 I realize there is a delay. I'm</p> <p>13 hearing it now.</p> <p>14 MR. MELITO: Yes.</p> <p>15 (Whereupon, there is a recess</p> <p>16 at 1:12 p.m. due to technical issues</p> <p>17 Mr. Sells is having; after which, the</p> <p>18 proceeding continued at 1:33 p.m. as</p> <p>19 follows.)</p> <p>20 MR. SELLS: Back on the record.</p> <p>21 Q. Ms. Kekana, is it F.I.T.'s policy</p> <p>22 when investigating complaints of</p> <p>23 discrimination against an employee to look at</p> <p>24 all available evidence that the employee has</p> <p>25 in whatever part of their employment that's</p>

<p style="text-align: right;">117</p> <p>1 D. KEKANA</p> <p>2 potentially discriminatory?</p> <p>3 MR. MELITO: Objection.</p> <p>4 A. That's correct.</p> <p>5 Q. Got it.</p> <p>6 And so, let's say in the middle of</p> <p>7 an investigation where F.I.T. is</p> <p>8 investigating a complaint of race</p> <p>9 discrimination against another employee and</p> <p>10 your office or F.I.T. becomes aware of</p> <p>11 discriminatory behavior in another context by</p> <p>12 that employee, will you use that as part of</p> <p>13 your investigation?</p> <p>14 MR. MELITO: Objection.</p> <p>15 A. If that were the case, we would.</p> <p>16 Q. Got it.</p> <p>17 Now, what about if you've already</p> <p>18 investigated a case --</p> <p>19 MR. MELITO: Objection --</p> <p>20 Q. -- where an employee was accused of</p> <p>21 discrimination and you have already come up</p> <p>22 with findings and evidence comes to your</p> <p>23 attention that that same employee who had</p> <p>24 been cleared or not substantiated, would you</p> <p>25 re-open, as part of F.I.T.'s policy, would</p>	<p style="text-align: right;">119</p> <p>1 D. KEKANA</p> <p>2 would not -- it would not cause us to re-open</p> <p>3 a closed matter.</p> <p>4 Q. I see.</p> <p>5 Let's take the situation where an</p> <p>6 F.I.T. employee makes a complaint against</p> <p>7 another F.I.T. employee being racist against</p> <p>8 blacks, let's say, or African-Americans, you</p> <p>9 investigate and find that you can't</p> <p>10 substantiate the conduct that was complained</p> <p>11 of was in fact racist; but six months or a</p> <p>12 year later, you learn that the employee who</p> <p>13 had the complaint made against them was part</p> <p>14 of the Klu Klux Klan.</p> <p>15 Are you saying you wouldn't</p> <p>16 re-open -- under F.I.T.'s policies you</p> <p>17 couldn't re-open that investigation and say,</p> <p>18 you know, we didn't realize at the time that</p> <p>19 the employee was part of the Klu Klux Klan.</p> <p>20 But now that we know the employee is</p> <p>21 part of the Klu Klux Klan, we could now</p> <p>22 substantiate that the actions that were taken</p> <p>23 were racially motivated; you're saying F.I.T.</p> <p>24 couldn't do that; is that right?</p> <p>25 MR. MELITO: Objection; form,</p>
<p style="text-align: right;">118</p> <p>1 D. KEKANA</p> <p>2 you re-open the investigation and utilize</p> <p>3 information that might be pertinent on</p> <p>4 whether or not that employee was actually</p> <p>5 racist or --</p> <p>6 MR. MELITO: Objection --</p> <p>7 Q. -- acting in a discriminatory</p> <p>8 fashion?</p> <p>9 MR. MELITO: Objection.</p> <p>10 A. We would review it. However, we</p> <p>11 would not re-open something that has already</p> <p>12 been investigated and closed.</p> <p>13 Q. Okay.</p> <p>14 What policy are you relying on?</p> <p>15 What F.I.T. policy are you referring to that</p> <p>16 would not allow for a re-opening of a closed</p> <p>17 investigation if new evidence was found?</p> <p>18 MR. MELITO: Objection.</p> <p>19 A. The policy allows for new evidence</p> <p>20 to be viewed that may not have been available</p> <p>21 at the time of the initial investigation.</p> <p>22 That is the allowance for new evidence as it</p> <p>23 relates to these types of investigations.</p> <p>24 If there is something that happens</p> <p>25 afterwards that is not new completely, it</p>	<p style="text-align: right;">120</p> <p>1 D. KEKANA</p> <p>2 speculation.</p> <p>3 A. So, when we find -- make findings in</p> <p>4 an investigation, we do so based upon the</p> <p>5 evidence that is present. The evidence as it</p> <p>6 relates to the incident that is bringing</p> <p>7 forth the complaint.</p> <p>8 If there -- in your hypothetical</p> <p>9 example that you have given, it is possible</p> <p>10 for a Klu Klux Klan member to act in a way</p> <p>11 that would not be motivated by race. So it</p> <p>12 is not necessarily that just their membership</p> <p>13 in the Klu Klux Klan would cause us or us</p> <p>14 learning of their membership in the Klu Klux</p> <p>15 Klan would then cause us to re-open the case</p> <p>16 as you defined it in your hypothetical</p> <p>17 scenario there.</p> <p>18 Q. And why not?</p> <p>19 MR. MELITO: Objection.</p> <p>20 A. As again in your hypothetical</p> <p>21 example, according to our policies, we're</p> <p>22 basing this on the evidence and the context</p> <p>23 under which an event, an incident happens.</p> <p>24 If the person's motivations become</p> <p>25 present in that there is pattern of them</p>

<p style="text-align: right;">121</p> <p>1 D. KEKANA</p> <p>2 doing multiple sorts of aggressive racist</p> <p>3 discriminatory acts towards a person, that is</p> <p>4 different. But their membership alone or</p> <p>5 affiliation alone, as described in your</p> <p>6 hypothetical example, would not be something</p> <p>7 that would automatically cause us to re-open</p> <p>8 an investigation that has been closed due to</p> <p>9 it not being able to be substantiated.</p> <p>10 Q. So are you saying that under</p> <p>11 F.I.T.'s antidiscrimination police that a</p> <p>12 member of the Klu Klux Klan could be an</p> <p>13 employee at F.I.T.?</p> <p>14 MR. MELITO: Objection. You</p> <p>15 can answer.</p> <p>16 A. That is not what I'm saying. We are</p> <p>17 a public institution, part of the State</p> <p>18 University of New York. Folks political,</p> <p>19 personal affiliations with various</p> <p>20 organizations is not something that is a term</p> <p>21 of employment. That is a -- that is a</p> <p>22 determination that is made at higher.</p> <p>23 Should they choose to hire that</p> <p>24 person, they have that right to be an</p> <p>25 employee. What they do not have the right to</p>	<p style="text-align: right;">123</p> <p>1 D. KEKANA</p> <p>2 termination, promotion, et cetera -- in an</p> <p>3 objective way without any discrimination,</p> <p>4 they are permitted to do so.</p> <p>5 Q. Got it.</p> <p>6 The same would apply if someone was</p> <p>7 a member of the Nazi party and they worked as</p> <p>8 an F.I.T. supervisor, there would be nothing</p> <p>9 under F.I.T.'s policies that would prevent</p> <p>10 that person from evaluating other F.I.T.</p> <p>11 employees under their supervision?</p> <p>12 MR. MELITO: Objection.</p> <p>13 Objection.</p> <p>14 A. Again, similarly to your previous</p> <p>15 hypothetical if someone's membership in the</p> <p>16 Nazi party were to influence their</p> <p>17 decisionmaking, their evaluations in a</p> <p>18 discriminatory fashion, that would be the --</p> <p>19 the prohibited act. Their being</p> <p>20 discriminatory in making said decisions, not</p> <p>21 their membership in the Nazi party.</p> <p>22 Q. So, let's talk about F.I.T.'s</p> <p>23 policies when an employee -- and let's say</p> <p>24 it's an African-American employee --</p> <p>25 complains about their supervisor not giving</p>
<p style="text-align: right;">122</p> <p>1 D. KEKANA</p> <p>2 do is harass anyone in a discriminatory</p> <p>3 fashion because that is prohibited.</p> <p>4 What they do not have the right to</p> <p>5 do is openly discriminate in someone's</p> <p>6 employment or seeking their education based</p> <p>7 on any sort of protected characteristics.</p> <p>8 Q. Got it.</p> <p>9 So someone who, let's say, is in a</p> <p>10 supervisory position at F.I.T. and they have</p> <p>11 to write, let's say, evaluations for people</p> <p>12 under their supervision, they have to make</p> <p>13 decisions regarding the terms and conditions</p> <p>14 of other employee's employment at F.I.T.,</p> <p>15 you're saying that a supervisor who is a</p> <p>16 member of the Klu Klux Klan would be allowed</p> <p>17 to make those determinations of other F.I.T.</p> <p>18 employees under their supervision; is that</p> <p>19 right?</p> <p>20 MR. MELITO: Objection. You</p> <p>21 can answer.</p> <p>22 A. In your hypothetical example, if</p> <p>23 said Klu Klux Klan member who is in a</p> <p>24 supervisory capacity is making those</p> <p>25 decisions as you laid out supervisory --</p>	<p style="text-align: right;">124</p> <p>1 D. KEKANA</p> <p>2 them a change in title or a raise and the</p> <p>3 employee, let's say the employee is</p> <p>4 African-American, says that the supervisor is</p> <p>5 discriminating or retaliating against them on</p> <p>6 the basis of either their race or complaints</p> <p>7 of retaliation. What is your responsibility</p> <p>8 in that regard?</p> <p>9 MR. MELITO: Objection.</p> <p>10 A. My office's responsibility is to</p> <p>11 investigate why said decision is made. So,</p> <p>12 as part of our promotion process there are</p> <p>13 justifications that need to be submitted not</p> <p>14 only for hiring, not only for promotion but</p> <p>15 also for termination; so if those</p> <p>16 justifications are objective and not</p> <p>17 discriminatory, my office would find them --</p> <p>18 it would not be substantiated under the</p> <p>19 policy.</p> <p>20 If we reviewed said justifications</p> <p>21 and we find that those justifications were</p> <p>22 discriminatory, we would then substantiate an</p> <p>23 investigation.</p> <p>24 Q. Got it.</p> <p>25 Let's say the African-American</p>

<p style="text-align: right;">125</p> <p>1 D. KEKANA</p> <p>2 employee says that I'm being denied a</p> <p>3 promotion, denied a change in title, denied a</p> <p>4 raise because my supervisor has discriminated</p> <p>5 against me on the basis of my race and/or</p> <p>6 retaliated against me on the basis of my</p> <p>7 complaints of race discrimination and you</p> <p>8 conduct an investigation and determine well,</p> <p>9 it's not substantiated; but then you later</p> <p>10 learn that supervisor was a member of the Klu</p> <p>11 Klux Klan, would you re-open the</p> <p>12 investigation into the denial of a promotion</p> <p>13 and raise for that employee at the time --</p> <p>14 assuming that the employee is still at F.I.T. --</p> <p>15 at the time that you learn of this very</p> <p>16 racist membership?</p> <p>17 MR. MELITO: Objection to form</p> <p>18 and objection to outside the scope of</p> <p>19 the 30(b) (6).</p> <p>20 A. So if I learn this, again,</p> <p>21 justifications would need to be promoted. So</p> <p>22 the reason why a complaint would not be</p> <p>23 substantiated is because there would be</p> <p>24 justifications as well as explanations that</p> <p>25 should be objectively reached submitted by</p>	<p style="text-align: right;">127</p> <p>1 D. KEKANA</p> <p>2 investigate what is the reason for the job</p> <p>3 promise, as you laid it out in your</p> <p>4 hypothetical scenario, not being fulfilled.</p> <p>5 And if it is not an objective reason that it</p> <p>6 is not fulfilled, then it would be not</p> <p>7 substantiate in your hypothetical scenario.</p> <p>8 If we were to find out that there</p> <p>9 was a reason that was discriminatory for this</p> <p>10 promise of the job in your hypothetical</p> <p>11 scenario to not have been given, then we</p> <p>12 would substantiate.</p> <p>13 Q. Have you ever -- has your office</p> <p>14 ever substantiated a complaint of</p> <p>15 discrimination based on race?</p> <p>16 MR. MELITO: Objection.</p> <p>17 A. Yes.</p> <p>18 Q. Tell me how many times?</p> <p>19 MR. MELITO: Objection.</p> <p>20 A. If i were to -- I don't have all the</p> <p>21 complaints and the log in front of me, so I</p> <p>22 really am going off of memory, but I would</p> <p>23 say about four times. But this is not all on</p> <p>24 the basis of race, this is substantiated on</p> <p>25 different protected characterizations.</p>
<p style="text-align: right;">126</p> <p>1 D. KEKANA</p> <p>2 the hypothetical Klu Klux Klan supervisor.</p> <p>3 So there is no reason to re-open it if those --</p> <p>4 if the decisionmaking was not discriminatory.</p> <p>5 Their membership into the Klu Klux Klan is</p> <p>6 not going to change why they justified the</p> <p>7 employment decision.</p> <p>8 Q. Well, what about a situation where</p> <p>9 an employee is told by the supervisor that</p> <p>10 the supervisor is going to give them a change</p> <p>11 in title and a raise and then the employee</p> <p>12 makes a complaint of race discrimination --</p> <p>13 MR. DRANOFF: Object to the</p> <p>14 form --</p> <p>15 Q. -- and then the supervisor does not</p> <p>16 give the person the raise or the change in</p> <p>17 title and you learn that they are a member of</p> <p>18 the Klu Klux Klan --</p> <p>19 MR. MELITO: Objection --</p> <p>20 Q. -- what would you do under those</p> <p>21 circumstances?</p> <p>22 MR. MELITO: Objection.</p> <p>23 MR. DRANOFF: Objection.</p> <p>24 A. Based on your hypothetical scenario</p> <p>25 that you have presented here, I would have to</p>	<p style="text-align: right;">128</p> <p>1 D. KEKANA</p> <p>2 Q. So my question to you is, Has there</p> <p>3 ever in your tenure at F.I.T., which dates</p> <p>4 back to -- is it 2008 until now, are you</p> <p>5 aware of any complaint of race discrimination</p> <p>6 at F.I.T. where the complaint was</p> <p>7 substantiated?</p> <p>8 MR. MELITO: Objection.</p> <p>9 A. Yes.</p> <p>10 Q. And when was that?</p> <p>11 MR. MELITO: Objection.</p> <p>12 A. I cannot recall the exact date.</p> <p>13 Q. Tell me what you recall about the --</p> <p>14 is it just one time?</p> <p>15 A. Well, the incident I'm thinking of</p> <p>16 is one time.</p> <p>17 Q. One time; and tell me the</p> <p>18 circumstances of that incident.</p> <p>19 MR. MELITO: Objection.</p> <p>20 A. This was a student complaint against</p> <p>21 a professor.</p> <p>22 Q. And what were the circumstances?</p> <p>23 MR. MELITO: Objection.</p> <p>24 A. The student complained that they</p> <p>25 were not allowed the same allowances as other</p>

<p style="text-align: right;">129</p> <p>1 D. KEKANA</p> <p>2 students in the classroom for turning in work</p> <p>3 late.</p> <p>4 Q. And what was the nature of the race</p> <p>5 complaint? Was it African-American? Was it</p> <p>6 Asian --</p> <p>7 A. The race of the student was Asian --</p> <p>8 MR. MELITO: Objection --</p> <p>9 A. Sorry.</p> <p>10 Q. The race of the student was Asian?</p> <p>11 A. Yes.</p> <p>12 Q. And who did this investigation?</p> <p>13 MR. MELITO: Objection.</p> <p>14 A. My office.</p> <p>15 Q. Were you involved at all in the</p> <p>16 investigation?</p> <p>17 MR. MELITO: Objection.</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 And what role did you play in it?</p> <p>21 MR. MELITO: Objection.</p> <p>22 A. I took notes as part of the</p> <p>23 investigation.</p> <p>24 Q. Okay.</p> <p>25 So were you the investigator or --</p>	<p style="text-align: right;">131</p> <p>1 D. KEKANA</p> <p>2 finding of --</p> <p>3 A. No.</p> <p>4 Q. -- substantiated?</p> <p>5 A. No.</p> <p>6 Q. Who did?</p> <p>7 MR. MELITO: Objection.</p> <p>8 A. This was the previous affirmative</p> <p>9 action officer.</p> <p>10 Q. So, it's fair to say that you did</p> <p>11 not make that finding, correct?</p> <p>12 MR. MELITO: Objection.</p> <p>13 A. Correct.</p> <p>14 Q. Okay.</p> <p>15 So, how many investigations of race</p> <p>16 complaints had you been involved with since</p> <p>17 you began working at F.I.T.?</p> <p>18 MR. MELITO: Objection. Going</p> <p>19 outside the scope.</p> <p>20 A. I mean, I cannot pinpoint the number</p> <p>21 going back that far. I can't recall. I can</p> <p>22 say on average, we received about eight to 10</p> <p>23 complaints in an academic year.</p> <p>24 Q. What is an academic year?</p> <p>25 A. That is from July 1 through June 30;</p>
<p style="text-align: right;">130</p> <p>1 D. KEKANA</p> <p>2 tell me your role is what I am asking. You</p> <p>3 took notes about what?</p> <p>4 MR. MELITO: Objection.</p> <p>5 A. This was during my tenure as</p> <p>6 affirmative action specialist.</p> <p>7 Q. So, this would have been somewhere</p> <p>8 between 2008 and -- I'm sorry. This is when</p> <p>9 you were a specialist you said?</p> <p>10 A. Correct.</p> <p>11 Q. So, that would have been 2013?</p> <p>12 A. Correct.</p> <p>13 Q. So, it would have been between 2013</p> <p>14 and 2015, right; because you had two years as</p> <p>15 being a specialist before you became the</p> <p>16 coordinator, correct?</p> <p>17 MR. MELITO: Objection.</p> <p>18 A. I --</p> <p>19 MR. MELITO: Go ahead.</p> <p>20 A. It was actually three years; it was</p> <p>21 between -- I'm sorry. Yes, 2013 to 2015 when</p> <p>22 I was affirmative action specialist; so it</p> <p>23 would have been during that time, yes.</p> <p>24 Q. All right.</p> <p>25 Were you the one that made the</p>	<p style="text-align: right;">132</p> <p>1 D. KEKANA</p> <p>2 that is how we count our year.</p> <p>3 Q. All right.</p> <p>4 So when you say "eight to 10</p> <p>5 complaints," you're talking about eight to 10</p> <p>6 complaints of race discrimination; is that</p> <p>7 correct?</p> <p>8 MR. MELITO: Objection.</p> <p>9 A. Eight to 10 complaints of</p> <p>10 discrimination that implicate the</p> <p>11 non-discrimination and antiharassment policy.</p> <p>12 Q. Got it --</p> <p>13 A. I don't have the breakdown of how</p> <p>14 many of those are race in front of me.</p> <p>15 Q. All right.</p> <p>16 And you started in April of 2008, so</p> <p>17 that would be 13 years; and if we use 10</p> <p>18 complaints a year that would be,</p> <p>19 approximately, 130 complaints.</p> <p>20 Q. And in those 130 complaints on</p> <p>21 average, you have not substantiated a single</p> <p>22 complaint of race discrimination; is that</p> <p>23 correct?</p> <p>24 MR. MELITO: Objection. Again,</p> <p>25 this is outside the scope of the</p>

<p style="text-align: right;">133</p> <p>1 D. KEKANA</p> <p>2 30(b)(6).</p> <p>3 A. I don't have my files in front of</p> <p>4 me; so I'm really working off of memory here.</p> <p>5 You know, there have been a number of</p> <p>6 complaints that fall under the</p> <p>7 non-discrimination antiharassment policy. I</p> <p>8 don't have the numbers that are based on race</p> <p>9 readily recalled. But I can say there have</p> <p>10 been complaints that have been substantiated</p> <p>11 under our non-discrimination antiharassment</p> <p>12 policy. How many of those have been about</p> <p>13 race, I -- I cannot recall.</p> <p>14 Q. Well, you just told us there was</p> <p>15 one.</p> <p>16 MR. MELITO: Objection --</p> <p>17 Q. -- now you taking it back. Are you</p> <p>18 taking it back?</p> <p>19 MR. MELITO: Objection.</p> <p>20 Q. You taking it back?</p> <p>21 MR. MELITO: Objection.</p> <p>22 Q. I'm just asking, you changing your</p> <p>23 answer now?</p> <p>24 A. I'm not changing my answer. You</p> <p>25 asked me to recall, and there was one that</p>	<p style="text-align: right;">135</p> <p>1 D. KEKANA</p> <p>2 Q. -- at F.I.T. in your office?</p> <p>3 A. We keep --</p> <p>4 MR. MELITO: Objection.</p> <p>5 A. We keep an internal log, complaint</p> <p>6 log of the complaints that are received in</p> <p>7 the office.</p> <p>8 Q. And where is the internal log?</p> <p>9 Where is that kept?</p> <p>10 MR. MELITO: Objection.</p> <p>11 Q. Is it a computer file or something</p> <p>12 else? That's what I'm trying to find out.</p> <p>13 A. It is a computer file.</p> <p>14 Q. And where is it kept?</p> <p>15 MR. MELITO: Objection.</p> <p>16 A. On a shared drive.</p> <p>17 Q. And is it something that could be</p> <p>18 printed out?</p> <p>19 MR. MELITO: Objection.</p> <p>20 A. Yes.</p> <p>21 MR. SELLS: Okay. We call for</p> <p>22 the production of the --</p> <p>23 Q. Does it have a name, this file?</p> <p>24 A. Can you repeat the question? I</p> <p>25 couldn't hear you.</p>
<p style="text-align: right;">134</p> <p>1 D. KEKANA</p> <p>2 popped into my head. Are there others, yes;</p> <p>3 but I'm trying to recall as best as possible.</p> <p>4 It's pretty hard to do when I don't have them</p> <p>5 at the ready that way.</p> <p>6 Q. Got it.</p> <p>7 But you can't recall as you sit here</p> <p>8 today a single time during your tenure that</p> <p>9 you have made a substantiated finding of a</p> <p>10 race complaint, right?</p> <p>11 MR. MELITO: Objection to the</p> <p>12 form, objection to outside the scope</p> <p>13 of the 30(b)(6).</p> <p>14 A. If I can repeat. I cannot recall</p> <p>15 how many complaints that I have substantiated</p> <p>16 have been on the basis of race. I can tell</p> <p>17 you that a number of cases as my time -- at</p> <p>18 my -- in my role currently that I have</p> <p>19 substantiated under the non-discrimination</p> <p>20 and antiharassment policy.</p> <p>21 Q. Okay.</p> <p>22 Is there a file or any type of</p> <p>23 metric that is kept regarding race</p> <p>24 complaints?</p> <p>25 MR. MELITO: Objection --</p>	<p style="text-align: right;">136</p> <p>1 D. KEKANA</p> <p>2 Q. Yes. The file that you have just</p> <p>3 described that is on an internal drive or</p> <p>4 shared drive I should say, what is the name</p> <p>5 of this file?</p> <p>6 A. We call that "summary log".</p> <p>7 Q. Summary log.</p> <p>8 MR. SELLS: We call for the</p> <p>9 production of the summary log for all</p> <p>10 race complaints that date back to</p> <p>11 your tenure at F.I.T.</p> <p>12 MR. MELITO: We'll take it</p> <p>13 under advisement. Please make a</p> <p>14 formal request in writing.</p> <p>15 MR. SELLS: Definitely. Let's</p> <p>16 take break for lunch now.</p> <p>17 We can return at 2:45.</p> <p>18 MR. MELITO: Okay.</p> <p>19 (Whereupon, a lunch recess was</p> <p>20 taken at 2:00 p.m., after which, the</p> <p>21 proceedings continued at 2:46 p.m. as</p> <p>22 follows.)</p> <p>23 MR. SELLS: Back on the record.</p> <p>24 Q. Ms. Kekana, before the lunch break</p> <p>25 you described a document you said is</p>

<p style="text-align: right;">137</p> <p>1 D. KEKANA</p> <p>2 contained within a shared drive that</p> <p>3 summarizes complaints of racism that have</p> <p>4 been made in F.I.T.</p> <p>5 Do you have a similar, I guess,</p> <p>6 summary document that relates to complaints</p> <p>7 of retaliation?</p> <p>8 A. They all appear on the same summary</p> <p>9 log.</p> <p>10 Q. So, if you could describe how the</p> <p>11 complaints of retaliation, how they appear on</p> <p>12 this log. Is it a separate thing or is it --</p> <p>13 I mean how does it work?</p> <p>14 A. It has its own line on the log; so</p> <p>15 will contain the date, the nature of the</p> <p>16 complaint, the parties.</p> <p>17 Q. Okay.</p> <p>18 Have you ever in your tenure at</p> <p>19 F.I.T., have you ever conducted an</p> <p>20 investigation into a complaint of</p> <p>21 retaliation?</p> <p>22 A. Yes.</p> <p>23 Q. All right.</p> <p>24 Approximately, how many have you</p> <p>25 investigated?</p>	<p style="text-align: right;">139</p> <p>1 D. KEKANA</p> <p>2 A. Yes.</p> <p>3 Q. And what were the circumstances</p> <p>4 behind your substantiating the complaint of</p> <p>5 retaliation?</p> <p>6 MR. MELITO: Objection.</p> <p>7 A. The one I'm recalling, retaliation</p> <p>8 in fact of Complainant against the</p> <p>9 Respondent, where the underlying complaint</p> <p>10 had been substantiated and the Complainant</p> <p>11 retaliated against the Respondent.</p> <p>12 Q. So, let me understand.</p> <p>13 What was the nature of the original</p> <p>14 complaint?</p> <p>15 MR. MELITO: Objection.</p> <p>16 A. The original complaint involved an</p> <p>17 argument between two employees. And I</p> <p>18 believe this was on the basis of age. The</p> <p>19 Complainant lodged it and the Respondent had</p> <p>20 called the Complainant a quote "old bitch".</p> <p>21 Q. Got it.</p> <p>22 And you or someone in the</p> <p>23 Affirmative Action Office substantiated that</p> <p>24 complaint; is that right?</p> <p>25 MR. MELITO: Objection.</p>
<p style="text-align: right;">138</p> <p>1 D. KEKANA</p> <p>2 A. I do not recall how many I have</p> <p>3 investigated.</p> <p>4 Q. Okay.</p> <p>5 Would you say on average is it eight</p> <p>6 to 10 like you described with regard to</p> <p>7 complaints of race discrimination; eight to</p> <p>8 10 per month -- per year? I'm sorry.</p> <p>9 A. Okay. No, I would not describe it</p> <p>10 as that.</p> <p>11 Q. Okay.</p> <p>12 Have you ever sustained a complaint</p> <p>13 of retaliation in your tenure at F.I.T.?</p> <p>14 MR. MELITO: Objection.</p> <p>15 A. Yes, I have substantiated a</p> <p>16 complaint of retaliation.</p> <p>17 Q. How many?</p> <p>18 A. I can't recall how many.</p> <p>19 Q. Well the one that you can recall,</p> <p>20 when was that?</p> <p>21 A. This was -- there was one I recall.</p> <p>22 Would have been -- I'm, you know, really</p> <p>23 reaching here. I think this would have been</p> <p>24 2018, summer of 2018.</p> <p>25 Q. Summer of 2018.</p>	<p style="text-align: right;">140</p> <p>1 D. KEKANA</p> <p>2 A. That's correct.</p> <p>3 Q. But then the Respondent was still</p> <p>4 allowed to work, right --</p> <p>5 MR. MELITO: Objection --</p> <p>6 Q. -- after you substantiated that</p> <p>7 complaint, the Respondent was still able to</p> <p>8 work at F.I.T., right?</p> <p>9 MR. MELITO: Objection.</p> <p>10 A. As I mentioned, I don't have a part</p> <p>11 in the discipline process.</p> <p>12 Q. That is not my question --</p> <p>13 A. They remained as an employee; that</p> <p>14 is correct.</p> <p>15 Q. All right.</p> <p>16 And the Respondent was then allowed</p> <p>17 to make a complaint about the Complainant</p> <p>18 retaliating; is that what I'm -- is that what</p> <p>19 you're saying --</p> <p>20 MR. MELITO: Objection --</p> <p>21 A. The Respondent did not make a</p> <p>22 complaint against the Complainant; that is</p> <p>23 not how the complaint was received.</p> <p>24 Q. But you said that there was</p> <p>25 retaliation from the Complainant against the</p>

<p style="text-align: right;">141</p> <p>1 D. KEKANA</p> <p>2 Respondent; is that what you just said?</p> <p>3 MR. MELITO: Objection.</p> <p>4 A. That is what I said, yes. We have a</p> <p>5 policy that allows for anyone who witnesses</p> <p>6 actions that violate the policy to make a</p> <p>7 complaint of the alleged mis -- violation to</p> <p>8 the policy.</p> <p>9 So, it does not have to be the</p> <p>10 person who is on the receiving end of the</p> <p>11 treatment, but anyone who witnesses that.</p> <p>12 Q. I see.</p> <p>13 So, you're saying that there was a</p> <p>14 different person at F.I.T. who made the</p> <p>15 complaint against the original Respondent</p> <p>16 saying that that original Respondent</p> <p>17 retaliated as well; is that correct?</p> <p>18 MR. MELITO: Objection.</p> <p>19 A. No, that is incorrect.</p> <p>20 Q. Tell me, tell me what your</p> <p>21 understanding is.</p> <p>22 A. The complaint -- there were two</p> <p>23 Complainants of -- there two Complainants.</p> <p>24 There is a Complainant in the underlying</p> <p>25 discrimination, and there is a separate</p>	<p style="text-align: right;">143</p> <p>1 D. KEKANA</p> <p>2 MR. MELITO: Objection.</p> <p>3 A. It is in the policy. I can't tell</p> <p>4 you the specific section without looking at</p> <p>5 it in front of me; but it is included in the</p> <p>6 non-discrimination antiharassment policy,</p> <p>7 specifically in and around retaliation.</p> <p>8 Q. Okay.</p> <p>9 So what is -- under F.I.T.'s</p> <p>10 policies, what is retaliation?</p> <p>11 A. Retaliation is taking any adverse</p> <p>12 action against another person who</p> <p>13 participated in good faith in the</p> <p>14 investigation process because they</p> <p>15 participated in said process.</p> <p>16 Q. I got it.</p> <p>17 Well, isn't that true that you are</p> <p>18 aware based upon your knowledge and training</p> <p>19 that if you sustain a complaint of</p> <p>20 discrimination or retaliation against an</p> <p>21 F.I.T. employee, that it might be used in</p> <p>22 connection with a lawsuit against F.I.T.?</p> <p>23 MR. MELITO: Objection to form;</p> <p>24 calls for legal conclusion.</p> <p>25 A. (No Response.)</p>
<p style="text-align: right;">142</p> <p>1 D. KEKANA</p> <p>2 Complainant in the complaint of retaliation.</p> <p>3 In the complaint of retaliation,</p> <p>4 Complainant A took retaliatory action against</p> <p>5 Respondent.</p> <p>6 Q. Can you explain to me under F.I.T.'s</p> <p>7 policies how a Complainant can be the one who</p> <p>8 retaliates --</p> <p>9 MR. MELITO: Objection --</p> <p>10 Q. -- just explain to me under F.I.T.</p> <p>11 policy how that works --</p> <p>12 MR. MELITO: Objection --</p> <p>13 Q. -- I'm totally confused about that.</p> <p>14 MR. MELITO: Objection.</p> <p>15 A. So, our policy of retaliation is --</p> <p>16 covers and includes anyone who participates</p> <p>17 in the investigatory process. That could</p> <p>18 include Complainant, Respondent, witness or a</p> <p>19 third party on behalf of Complainant,</p> <p>20 Respondent or witnesses.</p> <p>21 Q. Okay.</p> <p>22 But where is it written in the</p> <p>23 F.I.T. antidiscrimination policy that someone</p> <p>24 who is a Complainant can also retaliate;</p> <p>25 where is that written?</p>	<p style="text-align: right;">144</p> <p>1 D. KEKANA</p> <p>2 Q. You can answer.</p> <p>3 A. Can you repeat that question?</p> <p>4 (Whereupon, the requested</p> <p>5 portion of the transcript was read</p> <p>6 back.)</p> <p>7 MR. MELITO: Same objection.</p> <p>8 A. I don't know.</p> <p>9 Q. I'm sorry?</p> <p>10 A. I don't know.</p> <p>11 Q. I see.</p> <p>12 So, did you not mention that you got</p> <p>13 training related to Title 9; is that right?</p> <p>14 MR. MELITO: Objection.</p> <p>15 Q. Title 9, did you mention that?</p> <p>16 A. That's correct.</p> <p>17 Q. What is "Title 9"?</p> <p>18 MR. MELITO: Objection.</p> <p>19 A. "Title 9" is a federal law that</p> <p>20 affords you civil rights and equity on the</p> <p>21 basis of protected characterizations.</p> <p>22 Q. Okay.</p> <p>23 When you say "civil rights," like</p> <p>24 what?</p> <p>25 MR. MELITO: Objection.</p>

<p style="text-align: right;">145</p> <p>1 D. KEKANA</p> <p>2 A. It provides for equity as far as</p> <p>3 access with regards to your pursuing in your</p> <p>4 work environment.</p> <p>5 Q. What do you mean by "equity"?</p> <p>6 MR. MELITO: Objection.</p> <p>7 A. That you will be treated similarly</p> <p>8 to those who are similarly situated based on</p> <p>9 your position.</p> <p>10 Q. And if someone violates Title 9, are</p> <p>11 there any remedies?</p> <p>12 MR. MELITO: Objection to form</p> <p>13 and to a legal conclusion.</p> <p>14 A. There are number of avenues that</p> <p>15 folks can seek recourse; one such is filing a</p> <p>16 complaint in good faith through my office.</p> <p>17 Another is seeking recourse through outside</p> <p>18 agencies including the EEOC, New York State</p> <p>19 Division of Human Rights.</p> <p>20 Q. Is that it?</p> <p>21 A. As well as lawsuits --</p> <p>22 MR. MELITO: Objection.</p> <p>23 Q. Lawsuits, I was wondering when you</p> <p>24 would get to that.</p> <p>25 So lawsuits, that's when an employer</p>	<p style="text-align: right;">147</p> <p>1 D. KEKANA</p> <p>2 alleged that their civil rights were violated</p> <p>3 either through discrimination or retaliation</p> <p>4 on the job, then that could be used as</p> <p>5 evidence in a Title 7 lawsuit against F.I.T.,</p> <p>6 correct?</p> <p>7 MR. MELITO: Objection.</p> <p>8 A. Can you repeat the question?</p> <p>9 (Whereupon, the requested</p> <p>10 portion of the transcript was read</p> <p>11 back.)</p> <p>12 A. That is correct.</p> <p>13 Q. And that is why out of 130 race</p> <p>14 complaints you have not sustained a single --</p> <p>15 MR. MELITO: Objection --</p> <p>16 Q. -- one, right --</p> <p>17 MR. MELITO: Objection.</p> <p>18 A. That is incorrect.</p> <p>19 Q. Okay. Which part?</p> <p>20 A. You stated that the reason why I</p> <p>21 have not sustained -- as I understand the</p> <p>22 question, the reason why I have not sustained</p> <p>23 complaints of race is because they could be</p> <p>24 used in a lawsuit and that is in correct.</p> <p>25 Q. I see.</p>
<p style="text-align: right;">146</p> <p>1 D. KEKANA</p> <p>2 can be sued by an employee if there is a</p> <p>3 violation of their civil rights; is that</p> <p>4 correct?</p> <p>5 MR. MELITO: Objection.</p> <p>6 MR. DRANOFF: Objection to</p> <p>7 form.</p> <p>8 MR. MELITO: Yes, objection.</p> <p>9 A. (No Response.)</p> <p>10 Q. You can answer.</p> <p>11 A. Correct.</p> <p>12 Q. Correct.</p> <p>13 And so, you know that in order for</p> <p>14 an employee to be able to succeed in a Title</p> <p>15 7 case, that they would have to supply proof</p> <p>16 that they either have been discriminated</p> <p>17 against and/or retaliated against in order to</p> <p>18 be able to succeed in that lawsuit, right?</p> <p>19 MR. MELITO: Objection.</p> <p>20 A. I would presume so; as you would</p> <p>21 need evidence in any investigation process as</p> <p>22 well.</p> <p>23 Q. Right.</p> <p>24 And so, if you or your office were</p> <p>25 to investigate the claim of an employee who</p>	<p style="text-align: right;">148</p> <p>1 D. KEKANA</p> <p>2 So out of the 130 or so complaints</p> <p>3 of race discrimination that you never</p> <p>4 sustained, it was based upon some other</p> <p>5 reason; is that right?</p> <p>6 MR. MELITO: Objection.</p> <p>7 A. If I could clarify, in your question</p> <p>8 there is something that you are</p> <p>9 misrepresenting. Of those 130 complaints</p> <p>10 that we discussed, they are not specifically</p> <p>11 of race. This includes any complaint that</p> <p>12 implicates it non-discrimination and</p> <p>13 antiharassment. I cannot give you a number</p> <p>14 or even an estimate of how many of those</p> <p>15 would be on the basis of race.</p> <p>16 Q. Well, you just did before lunch.</p> <p>17 You said that you received eight to 10</p> <p>18 complaints of race discrimination each year --</p> <p>19 MR. MELITO: Objection.</p> <p>20 Mischaracterizes prior testimony --</p> <p>21 MR. SELLS: Excuse me, excuse</p> <p>22 me, excuse me, excuse me.</p> <p>23 Q. -- isn't that right?</p> <p>24 MR. MELITO: Objection.</p> <p>25 A. (No Response.)</p>

<p style="text-align: right;">149</p> <p>1 D. KEKANA</p> <p>2 Q. Isn't that what you said before</p> <p>3 lunch?</p> <p>4 MR. MELITO: Objection.</p> <p>5 A. I said that I do — I received</p> <p>6 complaints that implicate the</p> <p>7 non-discrimination and antiharassment policy.</p> <p>8 Q. Is that what you think you said?</p> <p>9 MR. MELITO: Objection. Now</p> <p>10 you're harassing the witness.</p> <p>11 A. (No Response.)</p> <p>12 Q. Is that what you think you said —</p> <p>13 MR. MELITO: Objection.</p> <p>14 A. That is what I believe I said.</p> <p>15 Q. Got it. All right.</p> <p>16 So now you wish to change your</p> <p>17 answer?</p> <p>18 MR. MELITO: Objection.</p> <p>19 Mischaracterizes her testimony.</p> <p>20 Objection to form.</p> <p>21 Q. Right, you wish to change it now</p> <p>22 isn't that right?</p> <p>23 MR. MELITO: Objection.</p> <p>24 Mischaracterizes her prior testimony.</p> <p>25 Q. You can answer.</p>	<p style="text-align: right;">151</p> <p>1 D. KEKANA</p> <p>2 A. My title is director of affirmative</p> <p>3 action and Title 9 coordinator.</p> <p>4 Q. Got it.</p> <p>5 And so, not only do you investigate</p> <p>6 but you also read the investigative reports</p> <p>7 of every single complaint that goes into your</p> <p>8 office; isn't that right?</p> <p>9 MR. MELITO: Objection.</p> <p>10 Mischaracterizes prior testimony.</p> <p>11 A. I review any complaints,</p> <p>12 investigations and reports as it implicates</p> <p>13 the non-discrimination and antiharassment</p> <p>14 policy of F.I.T.</p> <p>15 Q. All right.</p> <p>16 And so, that is more than eight to</p> <p>17 10 complaints a year; isn't that right</p> <p>18 MR. MELITO: Objection.</p> <p>19 A. Can you rephrase that question? I'm</p> <p>20 not understanding.</p> <p>21 Q. Yes. You just indicated that you</p> <p>22 yourself investigate eight to 10 a year. And</p> <p>23 what I am asking you now is that in your role</p> <p>24 as the affirmative action director, you look</p> <p>25 at more than just eight to 10 complaints</p>
<p style="text-align: right;">150</p> <p>1 D. KEKANA</p> <p>2 A. To clarify, I receive eight to 10</p> <p>3 complaints in an academic year that implicate</p> <p>4 the non-discrimination and antiharassment</p> <p>5 policy.</p> <p>6 Q. All right.</p> <p>7 So, let's break this down. Now</p> <p>8 you're saying you don't know what you</p> <p>9 testified to earlier, that there were eight to</p> <p>10 10 race complaints, now you're saying it's</p> <p>11 just antidiscrimination, is that right?</p> <p>12 MR. MELITO: Objection.</p> <p>13 Mischaracterizes her testimony —</p> <p>14 MR. SELLS: I'm trying to</p> <p>15 clarify.</p> <p>16 Q. Is that what you are saying now,</p> <p>17 Ms. Kekana? I want to understand.</p> <p>18 A. What I am saying is, I investigate</p> <p>19 on average in an academic year eight to 10</p> <p>20 complaints that fall under the</p> <p>21 non-discrimination and antiharassment policy.</p> <p>22 Q. You yourself investigate and you are</p> <p>23 also the affirmative action director; is that</p> <p>24 right?</p> <p>25 MR. MELITO: Objection.</p>	<p style="text-align: right;">152</p> <p>1 D. KEKANA</p> <p>2 every year, correct?</p> <p>3 MR. MELITO: Objection.</p> <p>4 A. In my role as director I am also the</p> <p>5 principle investigator for affirmative action</p> <p>6 and Title 9 at F.I.T.</p> <p>7 Q. That's not my question. Please try</p> <p>8 and follow me.</p> <p>9 The question is, In your role as</p> <p>10 director where you oversee every</p> <p>11 investigation and complaint that comes</p> <p>12 through your office, there are more than</p> <p>13 eight to 10 per year; isn't that correct?</p> <p>14 MR. MELITO: Objection.</p> <p>15 A. There could be more than eight to 10</p> <p>16 if it implicates a different policy that my</p> <p>17 office oversees.</p> <p>18 Q. Got it.</p> <p>19 And so the reason you focussed on</p> <p>20 eight to 10 is because it had to do with race</p> <p>21 specific --</p> <p>22 A. No.</p> <p>23 MR. MELITO: Objection to form,</p> <p>24 argumentative.</p> <p>25 Q. Because what you said earlier is</p>

<p style="text-align: right;">153</p> <p>1 D. KEKANA</p> <p>2 that you sustained, you believe, somewhere</p> <p>3 around four such complaints; but none were</p> <p>4 related to complaints of race discrimination.</p> <p>5 Do you remember that testimony?</p> <p>6 MR. Melito: Objection.</p> <p>7 A. I do not recall that testimony.</p> <p>8 Q. Okay.</p> <p>9 Well, you said that the only race</p> <p>10 discrimination claim that you remembered</p> <p>11 being sustained in your career at F.I.T. was</p> <p>12 one when you were an assistant -- or you were</p> <p>13 an affirmative action specialist and had to</p> <p>14 do with a complaint of an Asian student</p> <p>15 saying that they were discriminated against</p> <p>16 on the basis of their race. Do you remember</p> <p>17 that testimony?</p> <p>18 MR. MELITO: Objection to form.</p> <p>19 A. That was misrepresenting the</p> <p>20 testimony that I had given earlier. When</p> <p>21 pressed to remember specifics, I thought of</p> <p>22 one such instance; but I again want to</p> <p>23 reiterate that I -- without looking at the</p> <p>24 log or the records, I can't give a specific</p> <p>25 number as to how many. I was working off of</p>	<p style="text-align: right;">155</p> <p>1 D. KEKANA</p> <p>2 MR. MELITO: Objection.</p> <p>3 A. Pressed, I'm thinking of most recent</p> <p>4 substantiations that have been concluded. I</p> <p>5 can't say with certainty or a finite number</p> <p>6 as you wish me to.</p> <p>7 Q. Got it. Thank you for clarifying.</p> <p>8 Thank you.</p> <p>9 So now, what is F.I.T.'s policy as</p> <p>10 it relates to employees who lie during the</p> <p>11 investigation into complaints of</p> <p>12 discrimination or retaliation?</p> <p>13 MR. MELITO: Objection.</p> <p>14 Outside the scope of the 30(b)(6) and</p> <p>15 objection to form.</p> <p>16 You may answer in your personal</p> <p>17 capacity.</p> <p>18 A. If there were -- if there were</p> <p>19 someone who were not to participate in this</p> <p>20 process in good faith, that is to lie, I</p> <p>21 would -- and I learned of that, I would</p> <p>22 forward that to HR for discipline.</p> <p>23 Q. How would you learn of it --</p> <p>24 MR. MELITO: Objection --</p> <p>25 Q. -- how would you learn whether or</p>
<p style="text-align: right;">154</p> <p>1 D. KEKANA</p> <p>2 my own recollection.</p> <p>3 Q. Okay.</p> <p>4 But certainly as an affirmative</p> <p>5 action director over the last six years you</p> <p>6 have not sustained a single complaint of race</p> <p>7 discrimination or substantiated one; is that</p> <p>8 correct?</p> <p>9 MR. MELITO: Objection.</p> <p>10 A. I cannot say that.</p> <p>11 Q. Really. So you could remember it</p> <p>12 from back when you were a specialist and the</p> <p>13 then director substantiated it; but you as</p> <p>14 director cannot think of a single time that</p> <p>15 you sustained a complaint of --</p> <p>16 MR. MELITO: Objection to form.</p> <p>17 Q. -- race discrimination. I want to</p> <p>18 be --</p> <p>19 MR. MELITO: Objection --</p> <p>20 Q. -- to be clear.</p> <p>21 MR. MELITO: Objection to form</p> <p>22 and also harassing.</p> <p>23 A. At this time I cannot recall.</p> <p>24 Q. But you do recall substantiating</p> <p>25 four other complaints; is that right?</p>	<p style="text-align: right;">156</p> <p>1 D. KEKANA</p> <p>2 not an employee who was charged or had a</p> <p>3 complaint against them for discrimination and</p> <p>4 retaliation, how would you learn that they</p> <p>5 would lie during an investigation?</p> <p>6 MR. MELITO: Objection to form</p> <p>7 and also outside the scope of the</p> <p>8 30(b)(6).</p> <p>9 You may answer in your personal</p> <p>10 capacity.</p> <p>11 A. I guess if I were to be -- to</p> <p>12 receive some evidence of a lie.</p> <p>13 Q. Okay. Okay.</p> <p>14 Has that ever happened where you</p> <p>15 learned that an employee of F.I.T. during the</p> <p>16 course of an investigation into</p> <p>17 discrimination or retaliation lied?</p> <p>18 MR. MELITO: Objection to form.</p> <p>19 A. I do not recall.</p> <p>20 Q. You don't recall; is that right?</p> <p>21 MR. MELITO: Objection.</p> <p>22 A. I do not recall.</p> <p>23 Q. What would you do in the event you</p> <p>24 did find out that an employee lied during an</p> <p>25 investigation into allegations of race</p>

<p style="text-align: right;">157</p> <p>1 D. KEKANA</p> <p>2 discrimination and/or retaliation; what would</p> <p>3 you do about that?</p> <p>4 MR. MELITO: Objection to form</p> <p>5 and outside the scope of the</p> <p>6 30(b)(6).</p> <p>7 You may answer in your personal</p> <p>8 capacity.</p> <p>9 A. If I received notice of a violation</p> <p>10 of any policy, I would refer to that to Human</p> <p>11 Resources for discipline.</p> <p>12 Q. Even if you learned it today, would</p> <p>13 you do it?</p> <p>14 MR. MELITO: Objection.</p> <p>15 Outside the scope of the 30(b)(6).</p> <p>16 You may answer in your personal</p> <p>17 capacity.</p> <p>18 A. I cannot say.</p> <p>19 Q. Why?</p> <p>20 MR. MELITO: Objection. Same</p> <p>21 objection as before.</p> <p>22 I'll just note since I'm not</p> <p>23 repeating the same objections outside</p> <p>24 the scope, she may answer in her</p> <p>25 personal capacity. I will continue</p>	<p style="text-align: right;">159</p> <p>1 D. KEKANA</p> <p>2 Q. Okay.</p> <p>3 Does it have a time limit in the</p> <p>4 policy that you are talking about; is there a</p> <p>5 time limit? Because you raised something</p> <p>6 about time limits. And so I'm wondering</p> <p>7 whether or not if someone lies during the</p> <p>8 course of an investigation, does F.I.T. have</p> <p>9 a time limit on when you are required to</p> <p>10 report that they lied during the</p> <p>11 investigation?</p> <p>12 MR. MELITO: Objection.</p> <p>13 Outside the scope of the 30(b)(6) and</p> <p>14 to form.</p> <p>15 A. As I understand it, they don't. I</p> <p>16 think the question you asked me was what</p> <p>17 would make me report it. So I listed the</p> <p>18 several factors that I would include in my</p> <p>19 decision to report that learning -- if I were</p> <p>20 to learn something, as you said, today.</p> <p>21 Q. I thought you said F.I.T.'s policy</p> <p>22 is if someone lied during an investigation,</p> <p>23 you had a duty to report it to HR; is that</p> <p>24 right?</p> <p>25 MR. MELITO: Objection.</p>
<p style="text-align: right;">158</p> <p>1 D. KEKANA</p> <p>2 to object to form as well.</p> <p>3 A. In my personal capacity, I think I</p> <p>4 would need to understand the context under</p> <p>5 which I'm receiving said evidence. It is</p> <p>6 motivated by some other factor? Is it true?</p> <p>7 Is it credible? Is it plausible? I would</p> <p>8 want to know the veracity of the evidence</p> <p>9 that is being received, especially if it's</p> <p>10 being received outside of the timeliness of</p> <p>11 the investigation.</p> <p>12 Q. What do you mean "timeliness of the</p> <p>13 investigation"?</p> <p>14 MR. MELITO: Objection.</p> <p>15 A. Meaning, if it happened during the</p> <p>16 time of the investigation.</p> <p>17 Q. So, F.I.T. doesn't have a policy</p> <p>18 about what happens to someone who lies during</p> <p>19 an investigation; is that right?</p> <p>20 MR. MELITO: Objection.</p> <p>21 A. As I said before, if there's someone</p> <p>22 who does not participate in the process in</p> <p>23 good faith, the process is that that</p> <p>24 violation is then referred to Human</p> <p>25 Resources.</p>	<p style="text-align: right;">160</p> <p>1 D. KEKANA</p> <p>2 A. That is correct.</p> <p>3 Q. Okay.</p> <p>4 And nowhere in the policy does it</p> <p>5 say there is a time limit on when you are</p> <p>6 obligated to report the fact that an employee</p> <p>7 lied during an investigation, right?</p> <p>8 MR. MELITO: Objection.</p> <p>9 A. That's correct.</p> <p>10 Q. Got it.</p> <p>11 Now, you became aware of a complaint</p> <p>12 that my client, Ms. Phillips, made of</p> <p>13 discrimination, correct?</p> <p>14 MR. MELITO: Objection.</p> <p>15 A. That's correct.</p> <p>16 Q. Okay.</p> <p>17 Tell me what you remember about</p> <p>18 that.</p> <p>19 MR. MELITO: Objection.</p> <p>20 Go ahead.</p> <p>21 A. In the spring semester of 2018,</p> <p>22 Ms. Phillips reached out and said -- and</p> <p>23 provided a complaint against four separate</p> <p>24 people alleging discrimination on the basis</p> <p>25 of race. That race being</p>

<p style="text-align: right;">161</p> <p>1 D. KEKANA</p> <p>2 African-American/black.</p> <p>3 Q. It's interesting that you would jump</p> <p>4 to 2018. Didn't Ms. Phillips make another</p> <p>5 complaint that you were aware of?</p> <p>6 MR. MELITO: Objection.</p> <p>7 A. I'm aware of a complaint that</p> <p>8 Ms. Phillips filed when I was affirmative</p> <p>9 action specialist -- actually --</p> <p>10 Q. Why did you skip that one? Well,</p> <p>11 why did you skip that one --</p> <p>12 A. Actually before affirmative action</p> <p>13 specialist.</p> <p>14 MR. MELITO: Objection.</p> <p>15 A. I spoke to the most recent</p> <p>16 complaint. As I understand, that's what we</p> <p>17 are here to discuss.</p> <p>18 Q. Okay.</p> <p>19 Well tell me, let's go</p> <p>20 chronologically. So what do you recall about</p> <p>21 the complaint that you remember when you were</p> <p>22 a specialist; what do you remember about</p> <p>23 that?</p> <p>24 MR. MELITO: Objection.</p> <p>25 A. My role was quite different when the</p>	<p style="text-align: right;">163</p> <p>1 D. KEKANA</p> <p>2 you spoke to Ms. Phillips describing what the</p> <p>3 investigation showed?</p> <p>4 MR. MELITO: Objection.</p> <p>5 Go ahead.</p> <p>6 A. No, I am not certain if it was</p> <p>7 written materials or if it was verbal</p> <p>8 instructions that I was given by</p> <p>9 Ms. Gonzales.</p> <p>10 Q. Well, would your practice be to take</p> <p>11 notes of your conversation with Ms. Gonzales,</p> <p>12 if she were telling you what to say?</p> <p>13 MR. MELITO: Objection.</p> <p>14 A. At that time, no.</p> <p>15 Q. Let me ask you this, In terms of the</p> <p>16 investigations that are conducted by F.I.T.</p> <p>17 into complaints of discrimination and</p> <p>18 retaliation, is there a record retention</p> <p>19 component to it?</p> <p>20 MR. MELITO: Objection.</p> <p>21 A. Yes.</p> <p>22 Q. What is the record retention policy?</p> <p>23 A. The record retention, I believe, is</p> <p>24 seven years.</p> <p>25 Q. What do you mean by "seven years,"</p>
<p style="text-align: right;">162</p> <p>1 D. KEKANA</p> <p>2 complaint came in. What I did learn from the</p> <p>3 then affirmative action officer as she asked</p> <p>4 me to meet with one witness in that matter --</p> <p>5 excuse me, two witnesses I believe it was in</p> <p>6 that matter is that Ms. Phillips had put</p> <p>7 forth a complaint against her supervisor at</p> <p>8 the time, Pamela Elsworth of discriminatory</p> <p>9 harassment on the basis of race.</p> <p>10 Q. Okay.</p> <p>11 And what was your role in that?</p> <p>12 MR. MELITO: Objection.</p> <p>13 A. My role was I conducted two</p> <p>14 investigatory interviews with witnesses and</p> <p>15 then I met with Ms. Phillips to deliver the</p> <p>16 outcome of the investigation on behalf of</p> <p>17 Ms. Gonzales.</p> <p>18 Q. Okay.</p> <p>19 When you say you met with</p> <p>20 Mrs. Phillips regarding the outcome of the</p> <p>21 investigation, were there any written</p> <p>22 materials that you relied upon to do so?</p> <p>23 MR. MELITO: Objection.</p> <p>24 A. I don't recall. I cannot say.</p> <p>25 Q. So, you were off top of your head as</p>	<p style="text-align: right;">164</p> <p>1 D. KEKANA</p> <p>2 what do you mean?</p> <p>3 MR. MELITO: Objection.</p> <p>4 A. I'm sorry?</p> <p>5 Q. I'm asking, What do you mean by</p> <p>6 "seven years --"</p> <p>7 MR. MELITO: Same objection --</p> <p>8 Q. What records are kept for seven</p> <p>9 years?</p> <p>10 MR. MELITO: Same objection</p> <p>11 outside the scope of the 30(b)(6).</p> <p>12 She can answer in the scope of her</p> <p>13 personal capacity.</p> <p>14 A. To my recollection what would be</p> <p>15 kept would be the investigation file.</p> <p>16 Q. And what's in an investigation file?</p> <p>17 MR. MELITO: Same objection.</p> <p>18 A. That would be any statements taken</p> <p>19 by investigation parties, an investigation</p> <p>20 report, any evidence as it relates to the</p> <p>21 investigation.</p> <p>22 Q. "Any evidence"; is that right?</p> <p>23 A. To my recollection.</p> <p>24 Q. All right.</p> <p>25 So, in the event that the</p>

<p style="text-align: right;">165</p> <p>1 D. KEKANA</p> <p>2 affirmative action director tells you at the</p> <p>3 point in time when you were a specialist that</p> <p>4 you were to say certain things to an F.I.T.</p> <p>5 employee who made a complaint relating to how</p> <p>6 the investigation turned out, were you</p> <p>7 required to put the notes that you may have</p> <p>8 taken of that conversation into the</p> <p>9 investigation file?</p> <p>10 MR. MELITO: Same objection.</p> <p>11 Outside the scope of the 30(b)(6),</p> <p>12 form.</p> <p>13 A. If I had taken any notes, I would</p> <p>14 have placed them in the investigation file.</p> <p>15 Q. That was your practice or was --</p> <p>16 A. That have --</p> <p>17 Q. -- the policy?</p> <p>18 MR. MELITO: Objection.</p> <p>19 A. At the time that was the practice.</p> <p>20 Q. So, there was no policy that you had</p> <p>21 to put notes into the file, correct?</p> <p>22 MR. MELITO: Objection.</p> <p>23 A. That is correct.</p> <p>24 Q. Did that policy ever change?</p> <p>25 MR. MELITO: Objection.</p>	<p style="text-align: right;">167</p> <p>1 D. KEKANA</p> <p>2 regarding the conversation you had with the</p> <p>3 affirmative action director; that was my</p> <p>4 question --</p> <p>5 MR. MELITO: Objection.</p> <p>6 A. I would --</p> <p>7 MR. MELITO: Objection to form.</p> <p>8 Q. Sorry. You just said that you would</p> <p>9 not put those notes into the file?</p> <p>10 MR. MELITO: Objection.</p> <p>11 A. Can you repeat your question.</p> <p>12 (Whereupon, the requested</p> <p>13 portion of the transcript was read</p> <p>14 back.)</p> <p>15 A. If I was directed from the director</p> <p>16 of affirmative action, I would not place</p> <p>17 those notes into an investigation file. I</p> <p>18 wish to clarify my previous answer as it is</p> <p>19 clear I did not understand the question being</p> <p>20 asked.</p> <p>21 Q. Well, why wouldn't you put notes of</p> <p>22 what the affirmative action director asked</p> <p>23 you to do into the file?</p> <p>24 MR. MELITO: Objection.</p> <p>25 Outside the scope. It's in her</p>
<p style="text-align: right;">166</p> <p>1 D. KEKANA</p> <p>2 A. No.</p> <p>3 Q. So it's discretionary as to whether</p> <p>4 or not someone will put notes of a</p> <p>5 conversation that they had with the</p> <p>6 affirmative action director into the</p> <p>7 investigation file; is that correct?</p> <p>8 MR. MELITO: Objection.</p> <p>9 A. Notes that are taken with regards to</p> <p>10 meetings would count as an interview with the</p> <p>11 affirmative action officer; those would be</p> <p>12 placed. Handwritten notes or directives,</p> <p>13 those would not.</p> <p>14 Q. You just said you would put -- your</p> <p>15 practice, even though it wasn't required by</p> <p>16 policy, was to put notes that you took from</p> <p>17 the affirmative action director into the</p> <p>18 file; isn't that right? That's what you said</p> <p>19 before?</p> <p>20 MR. MELITO: Objection. Again,</p> <p>21 this is in her personal capacity.</p> <p>22 A. If I had taken notes as part of my</p> <p>23 meeting with Ms. Phillips under the --</p> <p>24 Q. That's not my question. My question</p> <p>25 has to do with your notes as a specialist</p>	<p style="text-align: right;">168</p> <p>1 D. KEKANA</p> <p>2 personal capacity. Objection to the</p> <p>3 form.</p> <p>4 A. Because those would have been</p> <p>5 directives as part of a task being given to</p> <p>6 me. I would not have included that in the</p> <p>7 investigation file.</p> <p>8 Q. Why not?</p> <p>9 MR. MELITO: Objection.</p> <p>10 A. I would not have included it as</p> <p>11 being notes for as pertinent to the</p> <p>12 investigation file.</p> <p>13 Q. Is that a policy of F.I.T. that the</p> <p>14 investigators who investigate discrimination</p> <p>15 and retaliation claims are not to put any</p> <p>16 notes that they take regarding instructions</p> <p>17 from the affirmative action director into an</p> <p>18 investigation file?</p> <p>19 MR. MELITO: Objection.</p> <p>20 A. No, that is not a policy.</p> <p>21 Q. Well, who directed you not to put</p> <p>22 the notes that you took from the affirmative</p> <p>23 action director into the investigation files?</p> <p>24 MR. MELITO: Objection.</p> <p>25 A. I was not directed to do so.</p>

<p style="text-align: right;">169</p> <p>1 D. KEKANA</p> <p>2 Q. So, that was just your own practice;</p> <p>3 is that right?</p> <p>4 MR. MELITO: Objection.</p> <p>5 A. Those are the steps I took in my</p> <p>6 personal capacity.</p> <p>7 Q. But now you're the director, right?</p> <p>8 A. Yes.</p> <p>9 Q. And so had you instructed your</p> <p>10 investigators or subordinates not to put</p> <p>11 notes of conversations that you had with them</p> <p>12 regarding an investigation of retaliation or</p> <p>13 discrimination into the investigation file?</p> <p>14 MR. MELITO: Objection.</p> <p>15 A. No.</p> <p>16 Q. Okay.</p> <p>17 So what was it that you recall</p> <p>18 telling Ms. Phillips about that complaint</p> <p>19 that she made back in -- do you remember what</p> <p>20 year it was?</p> <p>21 A. I -- I do not recall. It may have</p> <p>22 been 2012.</p> <p>23 Q. Okay.</p> <p>24 Now, as part of an investigation</p> <p>25 into a complaint of discrimination or</p>	<p style="text-align: right;">171</p> <p>1 D. KEKANA</p> <p>2 MR. MELITO: Okay.</p> <p>3 MR. SELLS: We're calling for</p> <p>4 the production of it.</p> <p>5 MR. MELITO: Oh, it sounds -- I</p> <p>6 was unclear what you were actually</p> <p>7 saying, so take it under advisement</p> <p>8 and make a formal request in writing.</p> <p>9 Q. Who did you speak to in connection</p> <p>10 with that 2012 complaint?</p> <p>11 A. I met with two witnesses who also</p> <p>12 worked in the graduate school and then I was</p> <p>13 instructed to have the meeting with</p> <p>14 Ms. Phillips to let her know the outcome.</p> <p>15 Q. Did you interview Ms. Phillips?</p> <p>16 A. I was not there for that.</p> <p>17 Q. Do you remember the two witnesses</p> <p>18 that you spoke to?</p> <p>19 A. I do recall the two witnesses.</p> <p>20 Q. Who were they?</p> <p>21 A. Carol DeSantis and Anton Baptiste.</p> <p>22 Q. Now in terms of the witness</p> <p>23 statements, you said that you took two</p> <p>24 witness statements. What is your practice of</p> <p>25 how these witness statements get taken during</p>
<p style="text-align: right;">170</p> <p>1 D. KEKANA</p> <p>2 retaliation, is there supposed to be a</p> <p>3 written report?</p> <p>4 A. Yes.</p> <p>5 Q. Was there such a written report done</p> <p>6 for Ms. Phillips 2012 complaint?</p> <p>7 A. I would not have written that</p> <p>8 report. I would have supplied the</p> <p>9 investigation interview notes for that</p> <p>10 report. But that report would have been</p> <p>11 written by the then director.</p> <p>12 Q. Do you know if one was ever written?</p> <p>13 A. I don't recall.</p> <p>14 MR. SELLS: Well, we call for</p> <p>15 the production of any report that was</p> <p>16 done late into the 2012 complaint of</p> <p>17 Ms. Phillips?</p> <p>18 MR. MELITO: Is there a</p> <p>19 question to that?</p> <p>20 MR. SELLS: What?</p> <p>21 MR. MELITO: Is that a question</p> <p>22 that --</p> <p>23 MR. SELLS: That was to you.</p> <p>24 MR. MELITO: To who?</p> <p>25 MR. SELLS: You.</p>	<p style="text-align: right;">172</p> <p>1 D. KEKANA</p> <p>2 the investigation into discrimination and/or</p> <p>3 retaliation?</p> <p>4 MR. MELITO: Objection.</p> <p>5 Are you asking about F.I.T. or</p> <p>6 personal, just so I know if I have to</p> <p>7 raise that objection.</p> <p>8 MR. SELLS: First, we'll start</p> <p>9 with whether or not there is a policy</p> <p>10 of F.I.T. regarding the taking of</p> <p>11 statements of witnesses and</p> <p>12 investigations for discrimination</p> <p>13 and/or retaliation.</p> <p>14 A. There is a practice currently in</p> <p>15 place in which witnesses -- all investigation</p> <p>16 parties for interview, there is a note taker</p> <p>17 who is present who will summarize the</p> <p>18 conversation and fashion it into a statement.</p> <p>19 That is then sent to the party for them to</p> <p>20 review and attest it to be true.</p> <p>21 Q. Okay.</p> <p>22 This is a policy you say?</p> <p>23 A. This is a practice, it is not part</p> <p>24 of the policy.</p> <p>25 Q. When did this practice come into</p>

<p style="text-align: right;">173</p> <p>1 D. KEKANA</p> <p>2 being?</p> <p>3 A. This came into being when I stepped</p> <p>4 in as director for affirmative action.</p> <p>5 Q. What was the practice before that</p> <p>6 regarding witness statements?</p> <p>7 A. Witnesses were asked to fashion and</p> <p>8 write their own statements.</p> <p>9 Q. So, witnesses could actually write</p> <p>10 their own statements before you became</p> <p>11 affirmative action director; is that correct?</p> <p>12 MR. MELITO: Objection --</p> <p>13 A. That's correct.</p> <p>14 Q. And is that what you did when you</p> <p>15 investigated Ms. Phillips's initial</p> <p>16 complaint? Did you ask --</p> <p>17 MR. MELITO: Objection --</p> <p>18 Q. -- the witnesses to write their own</p> <p>19 statements?</p> <p>20 A. We were --</p> <p>21 MR. MELITO: Objection --</p> <p>22 Q. I'm sorry?</p> <p>23 A. We requested that.</p> <p>24 Q. So, what is the protocol; when they</p> <p>25 wrote their own statement what would you do</p>	<p style="text-align: right;">175</p> <p>1 D. KEKANA</p> <p>2 A. This is a summary of the interview</p> <p>3 that Ms. Phillips gave with the then</p> <p>4 affirmative action officer.</p> <p>5 Q. All right.</p> <p>6 Now, do you know who wrote this</p> <p>7 summary?</p> <p>8 A. I don't recall if it was me. It may</p> <p>9 have also been another person, Delica</p> <p>10 Reduque, who worked at F.I.T. at the time.</p> <p>11 Q. Do you know if Delica refers to</p> <p>12 herself in the third person? The first</p> <p>13 person I should say.</p> <p>14 MR. MELITO: Objection.</p> <p>15 A. I don't understand the question.</p> <p>16 Can you rephrase that?</p> <p>17 Q. Yes. Does Delica say, "Delica" when</p> <p>18 she is talking about things that she does</p> <p>19 herself?</p> <p>20 MR. MELITO: Objection.</p> <p>21 A. In taking notes, often times, just</p> <p>22 recalling the way the two of us worked, we</p> <p>23 would spell out our own names just for the</p> <p>24 record of what we're writing.</p> <p>25 Q. I see.</p>
<p style="text-align: right;">174</p> <p>1 D. KEKANA</p> <p>2 then --</p> <p>3 MR. MELITO: Objection.</p> <p>4 A. If they would write their own</p> <p>5 statement, that would then be included as</p> <p>6 part of the investigation file.</p> <p>7 MR. SELLS: Can we pull up</p> <p>8 Exhibit 5.</p> <p>9 (Whereupon, Plaintiff's Exhibit</p> <p>10 6, two-page document Bates stamped</p> <p>11 FIT18 and 19, was marked for</p> <p>12 identification as of this date.)</p> <p>13 (Counsel is sharing the</p> <p>14 computer screen image.)</p> <p>15 Q. Now, do you recognize this document</p> <p>16 which is Bates stamped DF --</p> <p>17 MR. SELLS: That's 5. I think I</p> <p>18 want Exhibit 6 then. Can we please</p> <p>19 pull up 6.</p> <p>20 For the record, Plaintiff's</p> <p>21 Exhibit 6 is a two-page document</p> <p>22 Bates stamped D-F-I-T 18 and 19.</p> <p>23 Q. Do you recognize this memo?</p> <p>24 A. I do recognize it.</p> <p>25 Q. What do you recognize it to be?</p>	<p style="text-align: right;">176</p> <p>1 D. KEKANA</p> <p>2 A. Or somebody may have said "you," and</p> <p>3 the -- you know, I would write my name or she</p> <p>4 would write her name.</p> <p>5 Q. All right. All right.</p> <p>6 So when you said that you might have</p> <p>7 written this, why do you think you could have</p> <p>8 been the one that wrote it?</p> <p>9 MR. MELITO: Objection.</p> <p>10 A. Because it's in the same font that</p> <p>11 we used at that time.</p> <p>12 Q. Okay. All right.</p> <p>13 And in reading through it, does this</p> <p>14 refresh your recollection about your</p> <p>15 involvement in the investigation of that 2012</p> <p>16 complaint?</p> <p>17 A. I recall what is written here, yes.</p> <p>18 Q. Okay.</p> <p>19 MR. SELLS: Can we just scroll</p> <p>20 down.</p> <p>21 Q. There is a section down there -- the</p> <p>22 last paragraph on F.I.T. 18 where you say</p> <p>23 "this behavior has been happening for a long</p> <p>24 time. Milta (phonetic) and Anton in the</p> <p>25 department witnessed this behavior also."</p>

<p style="text-align: right;">177</p> <p>1 D. KEKANA</p> <p>2 Now, you indicated that you</p> <p>3 interviewed Anton; is that right?</p> <p>4 A. Yes, I did.</p> <p>5 Q. So, does that refresh your</p> <p>6 recollection that this writing was made by</p> <p>7 you?</p> <p>8 A. That didn't mean that I wrote this.</p> <p>9 I very well may have; but I don't recall.</p> <p>10 MR. SELLS: Can we go to the</p> <p>11 next page.</p> <p>12 Q. Now, do you recall speaking to Mary?</p> <p>13 A. Not in my capacity at the time. I</p> <p>14 did not speak with Mary.</p> <p>15 Again, at this time, I was the</p> <p>16 assistant; and so I only spoke with Carol and</p> <p>17 Anton at the instruction of -- from the</p> <p>18 director.</p> <p>19 Q. Okay.</p> <p>20 So, in terms of this document, this</p> <p>21 memo -- would you call it a memo or how would</p> <p>22 you describe this document?</p> <p>23 A. I would call it a summary of an</p> <p>24 investigation interview.</p> <p>25 Q. All right.</p>	<p style="text-align: right;">179</p> <p>1 D. KEKANA</p> <p>2 our practice.</p> <p>3 Q. Got it.</p> <p>4 So you could just choose what</p> <p>5 documents related to an investigation that</p> <p>6 you wanted to identify as having written or</p> <p>7 not; is that right?</p> <p>8 A. I --</p> <p>9 MR. MELITO: Objection.</p> <p>10 A. I -- I don't understand the</p> <p>11 question.</p> <p>12 Q. Yes. It was your choice if I want</p> <p>13 to put on there that I wrote it, I can; but --</p> <p>14 MR. MELITO: Objection --</p> <p>15 Q. -- but I don't have to; was that the</p> <p>16 policy?</p> <p>17 MR. MELITO: Objection.</p> <p>18 A. No, that was not the policy.</p> <p>19 Q. So, what was the policy then?</p> <p>20 A. There was no policy.</p> <p>21 Q. Got it.</p> <p>22 So just so I'm clear, in order for</p> <p>23 an investigation, for example, if someone</p> <p>24 wanted to review an investigation to find out</p> <p>25 if it was really fair and impartial, one of</p>
<p style="text-align: right;">178</p> <p>1 D. KEKANA</p> <p>2 So is it practice and policy that in</p> <p>3 investigating complaints of retaliation that</p> <p>4 people at F.I.T. doing the investigation and</p> <p>5 writing these memos, they're not supposed to</p> <p>6 identify themselves.</p> <p>7 A. Can you rephrase question? I'm not</p> <p>8 sure I understand.</p> <p>9 Q. Nobody identified themselves as</p> <p>10 having written this document, and I am asking</p> <p>11 you is that a policy and practice of --</p> <p>12 MR. MELITO: Objection --</p> <p>13 Q. -- at F.I.T. that as investigators</p> <p>14 when we write memos we do not have to say who</p> <p>15 we are. So we could deny --</p> <p>16 MR. MELITO: Objection.</p> <p>17 Q. -- ever saying --</p> <p>18 MR. MELITO: Objection.</p> <p>19 Q. -- is that a policy?</p> <p>20 A. That is not a policy of F.I.T.</p> <p>21 Q. Okay.</p> <p>22 Is the policy that you are supposed</p> <p>23 to identify the document that you write as</p> <p>24 part of an investigation?</p> <p>25 A. At that time, that was not part of</p>	<p style="text-align: right;">180</p> <p>1 D. KEKANA</p> <p>2 the things that a person might want to see is</p> <p>3 who is writing the material that's used to</p> <p>4 either sustain and substantiate the claims or</p> <p>5 not; wouldn't you agree?</p> <p>6 MR. MELITO: Objection. Can</p> <p>7 you repeat the question? I'm not</p> <p>8 sure I understand what you are</p> <p>9 asking.</p> <p>10 Q. Yes. Let's say someone wanted to</p> <p>11 challenge a finding that was made regarding a</p> <p>12 complaint of discrimination and they wanted</p> <p>13 to look through the file to see whether or</p> <p>14 not the investigation was fair and impartial,</p> <p>15 one of the things that they would want to</p> <p>16 know is who did what during the</p> <p>17 investigation; wouldn't you agree with that?</p> <p>18 MR. MELITO: Objection.</p> <p>19 A. In my personal capacity, I suppose.</p> <p>20 Q. Well, how are you going to know if</p> <p>21 someone acted unfair and wasn't partial or</p> <p>22 wasn't impartial I should say if you don't</p> <p>23 know who they are --</p> <p>24 MR. MELITO: Objection --</p> <p>25 Q. -- how would you determine that?</p>

<p style="text-align: right;">181</p> <p>1 D. KEKANA</p> <p>2 MR. MELITO: Objection.</p> <p>3 A. I don't know.</p> <p>4 Q. Right.</p> <p>5 So, looking at this memo for</p> <p>6 example, you had no idea who wrote it; isn't</p> <p>7 that right?</p> <p>8 MR. MELITO: Objection.</p> <p>9 A. I know it can be one or two people</p> <p>10 who would have written this based on how the</p> <p>11 offices were structured at that time and the</p> <p>12 way we worked.</p> <p>13 Q. You know it's one of two people;</p> <p>14 isn't that right?</p> <p>15 A. That's correct.</p> <p>16 Q. Well, how is that an accurate</p> <p>17 investigation if you have to narrow it down</p> <p>18 to two people? Like it could have been the</p> <p>19 Klu Klux Klan member or someone else. Is --</p> <p>20 MR. MELITO: Objection --</p> <p>21 Q. -- is that the way F.I.T. operates?</p> <p>22 Like if you want to look at what work was</p> <p>23 done, you have to guess about who it is that</p> <p>24 did the work?</p> <p>25 MR. MELITO: Objection.</p>	<p style="text-align: right;">183</p> <p>1 D. KEKANA</p> <p>2 pertains to the investigation?</p> <p>3 MR. MELITO: Objection to form.</p> <p>4 Again in her personal capacity.</p> <p>5 A. In my personal capacity, it would be</p> <p>6 appropriate to author all notes and identify</p> <p>7 who has taken those notes and whose notes</p> <p>8 they represent.</p> <p>9 Q. So you as the affirmative action</p> <p>10 director, have you mandated that all</p> <p>11 investigators that investigate claims of</p> <p>12 retaliation and/or discrimination must</p> <p>13 identify the notes that they take and put</p> <p>14 into the investigation file?</p> <p>15 MR. MELITO: Objection.</p> <p>16 A. Processes since this time has</p> <p>17 changed. Obviously, as me coming in as</p> <p>18 director, I have changed the way that it</p> <p>19 works based on the resources available to us</p> <p>20 in the office to identify roles as well as</p> <p>21 who is present at interviews.</p> <p>22 Q. Who is present? Well, what about if</p> <p>23 it's a summary? Are they required to</p> <p>24 identify who is writing the summary?</p> <p>25 MR. MELITO: Objection.</p>
<p style="text-align: right;">182</p> <p>1 D. KEKANA</p> <p>2 A. (No Response.)</p> <p>3 Q. Is that right?</p> <p>4 A. I'm not sure I understand what --</p> <p>5 what question is being asked.</p> <p>6 Q. Yes. Let's say someone wanted to</p> <p>7 say, Hey, I want to make sure that this is a</p> <p>8 fair and impartial investigation that was</p> <p>9 conducted by F.I.T. into the allegations of</p> <p>10 discrimination and retaliation; do you think</p> <p>11 that such an investigation could be done if</p> <p>12 the person doing the investigation about</p> <p>13 whether it's fair and impartial didn't even</p> <p>14 know who did what and had to guess about</p> <p>15 whether it's one person or the other; do you</p> <p>16 think that's the way it should be done?</p> <p>17 MR. MELITO: Objection, form</p> <p>18 and outside the scope. She can</p> <p>19 answer in her personal capacity.</p> <p>20 A. I don't know.</p> <p>21 Q. Wouldn't you think that the better</p> <p>22 practice would be every investigator who is</p> <p>23 supposed to -- who does something during an</p> <p>24 investigation identifies what it is that they</p> <p>25 do and what it is that they write as it</p>	<p style="text-align: right;">184</p> <p>1 D. KEKANA</p> <p>2 A. Yes.</p> <p>3 Q. And how did you implement this</p> <p>4 policy?</p> <p>5 A. It is a practice I implemented in my</p> <p>6 office as director, and I instructed the</p> <p>7 administrative assistant to do so.</p> <p>8 Q. And how was this instruction given?</p> <p>9 A. I told her verbally to do this.</p> <p>10 Q. What was the outcome of that 2012</p> <p>11 complaint that Ms. Phillips made?</p> <p>12 A. To my best recollection, it was not</p> <p>13 substantiated that Pamela Elsworth's</p> <p>14 treatment was motivated by race.</p> <p>15 Q. Now, you made reference to a 2018</p> <p>16 complaint that Ms. Phillips made; do you</p> <p>17 recall that?</p> <p>18 MR. SELLS: We can take down</p> <p>19 the document.</p> <p>20 (Screen sharing has ended).</p> <p>21 A. Yes.</p> <p>22 Q. By then, you were the affirmative</p> <p>23 action director; is that right?</p> <p>24 A. Yes.</p> <p>25 Q. Okay.</p>

<p style="text-align: right;">185</p> <p>1 D. KEKANA</p> <p>2 What do you recall about the</p> <p>3 complaint that Ms. Phillips raised in 2018?</p> <p>4 A. That I recall, Ms. Phillips came</p> <p>5 forward with a complaint against four</p> <p>6 Respondents of behaviors from -- that she</p> <p>7 alleged were discriminatory against her on</p> <p>8 the basis of race.</p> <p>9 Q. And how was this complaint made?</p> <p>10 A. This was made during an</p> <p>11 investigative interview.</p> <p>12 Q. Okay.</p> <p>13 Do you recall Ms. Phillips</p> <p>14 subpoenaing any type of written statement</p> <p>15 regarding her complaint?</p> <p>16 A. Ms. Phillips put forward a revision</p> <p>17 of the summary that was provided by our note</p> <p>18 taker, Jerilee Fonseca; and that was her</p> <p>19 written statement that she had edited to</p> <p>20 attest that it was true to what she said.</p> <p>21 MR. SELLS: Can we pull up</p> <p>22 Exhibit 10.</p> <p>23 (Whereupon, Plaintiff's Exhibit</p> <p>24 10, e-mail thread, was marked for</p> <p>25 identification as of this date.)</p>	<p style="text-align: right;">187</p> <p>1 D. KEKANA</p> <p>2 hour." There is a section in there that</p> <p>3 talks about "Dean Davis." Do you see that?</p> <p>4 A. Yes.</p> <p>5 MR. SELLS: Keep scrolling</p> <p>6 down. Stop.</p> <p>7 Q. Okay.</p> <p>8 So, here there is another -- what</p> <p>9 I'm talking about here is the following Monday</p> <p>10 -- you see that paragraph starting "The</p> <p>11 following Monday when I came into the office,</p> <p>12 I made an appointment to speak to Dean Mary</p> <p>13 Davis and told her what was said. Her first</p> <p>14 reaction was to chuckle and she said, Well,</p> <p>15 nobody uses those terms anymore. Those terms</p> <p>16 are out dated." And this was it pretty much,</p> <p>17 and then she talks about "I told Mary. When I</p> <p>18 told her what Marilyn said to the student</p> <p>19 aide, Julia, about African-Americans were</p> <p>20 considered 3/5th of a human being she replied,</p> <p>21 Well, historically she is correct."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 MR. SELLS: Keep scrolling</p> <p>25 down. Stop.</p>
<p style="text-align: right;">186</p> <p>1 D. KEKANA</p> <p>2 (Counsel is sharing the</p> <p>3 computer screen image.)</p> <p>4 MR. SELLS: Just for the</p> <p>5 record, Plaintiff's Exhibit 10 is an</p> <p>6 e-mail thread with the Bates stamp --</p> <p>7 this does not have a Bates stamp.</p> <p>8 Q. Do you recognize this to be the</p> <p>9 complaint e-mail that was sent you from</p> <p>10 Ms. Phillips?</p> <p>11 MR. SELLS: We can scroll down</p> <p>12 little bit. Yes, stop.</p> <p>13 Q. The second page of the exhibit has</p> <p>14 Marjorie Phillips, the date March 28, 2018</p> <p>15 and the time 10:00 a.m.; do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Without reading through everything,</p> <p>18 if you could scroll down there is a first</p> <p>19 incident involving Brenda Cowan; second</p> <p>20 incident involving Marilyn Barton; and if you</p> <p>21 go to the third incident, that involved</p> <p>22 Jonathan Kyle Farmer; then there is a fourth</p> <p>23 incident that involved Brenda Cowan. Keep</p> <p>24 going down, keep going down. Then you see</p> <p>25 the paragraph that starts "within an half</p>	<p style="text-align: right;">188</p> <p>1 D. KEKANA</p> <p>2 Q. The next paragraph we have up on the</p> <p>3 screen starts with "I did not expect Dean</p> <p>4 Mary Davis to respond this way. I was deeply</p> <p>5 hurt and even more offended."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Okay.</p> <p>9 Now, this paragraph also contains</p> <p>10 the language "I told her I didn't -- if</p> <p>11 someone offends me in the way that she had, I</p> <p>12 wouldn't feel compelled to educate anyone. I</p> <p>13 was expecting more dialogue from the dean.</p> <p>14 In that moment, I decided to go through the</p> <p>15 list of incidents and offenses that I had</p> <p>16 overlooked. I believe she was not trying to</p> <p>17 show any emotion."</p> <p>18 "When I wasn't getting much response</p> <p>19 I said, 'I did have the option of going to</p> <p>20 EEO if I wanted.' Then she said there are</p> <p>21 institutions in place within the college</p> <p>22 where I can go. I responded by 'If I chose</p> <p>23 to follow up with these institutions, the</p> <p>24 first question they would ask would be had I</p> <p>25 spoken with the person in charge?"</p>

<p style="text-align: right;">189</p> <p>1 D. KEKANA</p> <p>2 "Right from the start of our</p> <p>3 conversation, unfortunately, I felt the dean</p> <p>4 was siding with Marilyn Barton. She wasn't</p> <p>5 showing any sense of fairness or compassion</p> <p>6 for what I was clearly very upset about at</p> <p>7 the time. I wasn't sure if she just didn't</p> <p>8 care or was this is the way F.I.T. had</p> <p>9 trained their managers to respond in</p> <p>10 situations like this."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Do you recall reading that when</p> <p>14 Ms. Phillips e-mailed it to you?</p> <p>15 A. Yes.</p> <p>16 MR. SELLS: Can we just keep</p> <p>17 going down -- go backup. We can take</p> <p>18 down the document.</p> <p>19 (Screen sharing has ended).</p> <p>20 Q. Now regarding Ms. Phillips' written</p> <p>21 complaint, do you see that she talked about</p> <p>22 several incidents of what she considered to</p> <p>23 be racism, right?</p> <p>24 A. Yes.</p> <p>25 Q. And discriminatory treatment, right?</p>	<p style="text-align: right;">191</p> <p>1 D. KEKANA</p> <p>2 repeat the question.</p> <p>3 MR. MELITO: Can you let her</p> <p>4 finish her testimony.</p> <p>5 MR. SELLS: She is not</p> <p>6 answering my question.</p> <p>7 Q. Listen to the question and answer my</p> <p>8 question.</p> <p>9 MR. MELITO: You objected to</p> <p>10 the same thing during Plaintiff's</p> <p>11 deposition.</p> <p>12 MR. SELLS: We will have it</p> <p>13 read back, Nicholas.</p> <p>14 MR. MELITO: I'm just noting --</p> <p>15 MR. SELLS: Just let her read</p> <p>16 it back.</p> <p>17 (Whereupon, the requested</p> <p>18 portion of the transcript was read</p> <p>19 back.)</p> <p>20 MR. SELLS: That's not the</p> <p>21 question. Let me withdraw it, and I</p> <p>22 will repeat the question.</p> <p>23 Q. Now if you had determined -- before</p> <p>24 you would allow any investigation to go</p> <p>25 forward, if you had to determine that what</p>
<p style="text-align: right;">190</p> <p>1 D. KEKANA</p> <p>2 A. Yes.</p> <p>3 Q. And so, the first thing that the</p> <p>4 affirmative action office had to do when it</p> <p>5 received it was to make a determination about</p> <p>6 whether or not, if the affirmative action</p> <p>7 department would sustain those allegations,</p> <p>8 would it rise to the level of a</p> <p>9 discriminatory act; is that right?</p> <p>10 MR. MELITO: Objection.</p> <p>11 A. (No Response.)</p> <p>12 MR. MELITO: You may answer.</p> <p>13 A. Yes.</p> <p>14 Q. Got it.</p> <p>15 And so under F.I.T.'s policy, if you</p> <p>16 concluded that the allegations Ms. Phillips</p> <p>17 made had been substantiated, then they would</p> <p>18 have risen to the level of discrimination,</p> <p>19 right?</p> <p>20 MR. MELITO: Objection.</p> <p>21 A. Individually on their merit, no.</p> <p>22 What Ms. Phillips was presenting was an</p> <p>23 argument that --</p> <p>24 Q. I'm not asking you that.</p> <p>25 MR. SELLS: Can you please</p>	<p style="text-align: right;">192</p> <p>1 D. KEKANA</p> <p>2 Ms. Phillips presented, if it was sustained,</p> <p>3 would have risen to the level of</p> <p>4 discrimination or discriminatory practice,</p> <p>5 correct?</p> <p>6 MR. MELITO: Objection.</p> <p>7 A. Prior to -- prior to initiating an</p> <p>8 investigation, I would have to establish that</p> <p>9 if true, would this rise to a violation of</p> <p>10 the policy.</p> <p>11 Q. And so you didn't because you</p> <p>12 investigated Ms. Phillips complaint; is that</p> <p>13 right?</p> <p>14 MR. MELITO: Objection.</p> <p>15 Misstates testimony to form.</p> <p>16 A. I initiated an investigation.</p> <p>17 Q. Now, part of what Ms. Phillips</p> <p>18 claimed was that she went to Dean Davis with</p> <p>19 her complaint and Dean Davis told her if she</p> <p>20 wanted to take it to the EEO office she</p> <p>21 could; is that right?</p> <p>22 MR. MELITO: Objection.</p> <p>23 A. (No Response.)</p> <p>24 Q. You could answer. What did you say?</p> <p>25 A. That is correct.</p>

<p style="text-align: right;">193</p> <p>1 D. KEKANA</p> <p>2 Q. Now, did you report Dean Davis to HR</p> <p>3 for failing to take Ms. Phillips' complaint</p> <p>4 to you?</p> <p>5 MR. MELITO: Objection.</p> <p>6 A. Not at the initial beginning of the</p> <p>7 investigation.</p> <p>8 Q. And why not?</p> <p>9 MR. MELITO: Objection.</p> <p>10 A. I wish to provide all Respondents,</p> <p>11 including Ms. Davis, an opportunity to</p> <p>12 respond, if possible, to what was presented</p> <p>13 as being alleged prior to me turning that</p> <p>14 over to HR.</p> <p>15 Q. Did you speak or did someone from</p> <p>16 your office speak to Dean Davis about that</p> <p>17 very specific allegation?</p> <p>18 A. Yes.</p> <p>19 Q. And who was it that spoke to Dean</p> <p>20 Davis?</p> <p>21 A. I spoke with Ms. Davis.</p> <p>22 Q. And what did she tell you?</p> <p>23 A. At that time I -- actually, I do not</p> <p>24 recall.</p> <p>25 Q. Well, did there come a point in time</p>	<p style="text-align: right;">195</p> <p>1 D. KEKANA</p> <p>2 specific?</p> <p>3 A. Prior to the global pandemic.</p> <p>4 Q. So, let me ask you. How did you</p> <p>5 learn about the deposition today?</p> <p>6 A. I was informed that there would be a</p> <p>7 deposition.</p> <p>8 Q. Got it.</p> <p>9 And what exactly did you do to</p> <p>10 prepare for the deposition?</p> <p>11 MR. MELITO: Objection.</p> <p>12 A. I didn't do much to prepare for the</p> <p>13 investigation.</p> <p>14 Q. Well, tell me what you did do?</p> <p>15 A. I spoke with Counsel what to expect --</p> <p>16 MR. MELITO: Objection. Do not</p> <p>17 -- objection. Do not go into what we</p> <p>18 discussed.</p> <p>19 So, Mr. Sells, if you have a</p> <p>20 follow up.</p> <p>21 Q. What else? I'm not asking what your</p> <p>22 lawyer said to you. You said you met with</p> <p>23 Counsel. Did you review any documents?</p> <p>24 MR. MELITO: Objection. Do not</p> <p>25 answer.</p>
<p style="text-align: right;">194</p> <p>1 D. KEKANA</p> <p>2 when you referred the complaint of Dean Davis</p> <p>3 failing to report Ms. Phillips' complaint of</p> <p>4 discrimination to the affirmative action</p> <p>5 office?</p> <p>6 MR. MELITO: Objection.</p> <p>7 A. I forwarded my report, my</p> <p>8 investigatory report, to HR including all my</p> <p>9 findings and rational for their appropriate</p> <p>10 review and action.</p> <p>11 Q. Was that one of the things that you</p> <p>12 put in your report was that Dean Davis failed</p> <p>13 to report a complaint of discrimination that</p> <p>14 was made to her as a supervisory reporter?</p> <p>15 MR. MELITO: Objection.</p> <p>16 A. I don't recall explicitly stating it</p> <p>17 in that way.</p> <p>18 Q. Well, how did you state it, as you</p> <p>19 recall?</p> <p>20 A. I'd have to review the file.</p> <p>21 Q. When was the last time you saw your</p> <p>22 report?</p> <p>23 A. I do not recall, but some time ago.</p> <p>24 Q. When you say "some time ago," I</p> <p>25 don't know what that means. Can you be more</p>	<p style="text-align: right;">196</p> <p>1 D. KEKANA</p> <p>2 MR. SELLS: On what basis?</p> <p>3 MR. MELITO: Same basis you</p> <p>4 raised when you objected to that</p> <p>5 question --</p> <p>6 MR. SELLS: No, no, no, no --</p> <p>7 MR. MELITO: -- in Plaintiff's</p> <p>8 deposition.</p> <p>9 MR. SELLS: I asked first</p> <p>10 whether you reviewed documents. I</p> <p>11 didn't ask which ones. I just asked</p> <p>12 did you review documents as part of</p> <p>13 your preparation.</p> <p>14 MR. MELITO: I'll object to</p> <p>15 that. If you want to specify and</p> <p>16 clarify if it's with Counsel or out --</p> <p>17 MR. SELLS: Listen, listen,</p> <p>18 listen, listen. Please, with the</p> <p>19 speaking objections -- either you're</p> <p>20 going to tell her don't answer the</p> <p>21 question, there is a privilege or</p> <p>22 you're not -- just say -- just answer</p> <p>23 the question did you review</p> <p>24 documents.</p> <p>25 MR. MELITO: My apology with</p>

<p style="text-align: right;">197</p> <p>1 D. KEKANA</p> <p>2 trying to assist you with questioning --</p> <p>3 MR. SELLS: I don't need your</p> <p>4 assistance. I'm quite capable.</p> <p>5 MR. MELITO: Implicates</p> <p>6 attorney/client privilege the way it</p> <p>7 is worded. Do not answer.</p> <p>8 MR. SELLS: Whether or not she</p> <p>9 looked at documents, what is the</p> <p>10 attorney/client privilege to that?</p> <p>11 Whether she looked at documents.</p> <p>12 What is it? Explain it for the</p> <p>13 record.</p> <p>14 MR. MELITO: Oh, you want me to</p> <p>15 explain now?</p> <p>16 MR. SELLS: Yes, because this</p> <p>17 is obstructionist.</p> <p>18 MR. MELITO: No.</p> <p>19 MR. SELLS: This is</p> <p>20 obstructionist. Tell me what the</p> <p>21 attorney/client privilege associated</p> <p>22 with whether or not she looked at</p> <p>23 documents in preparation for this</p> <p>24 deposition. What is it?</p> <p>25 MR. MELITO: Oh, so now I will</p>	<p style="text-align: right;">199</p> <p>1 D. KEKANA</p> <p>2 A. You asked me when I last read my</p> <p>3 report; and that is the last time I read my</p> <p>4 report.</p> <p>5 Q. I said when is the last time you saw</p> <p>6 your report --</p> <p>7 MR. MELITO: Objection.</p> <p>8 Do not answer.</p> <p>9 Q. Well, you said it was before the</p> <p>10 global pandemic; isn't it?</p> <p>11 A. (No Response.)</p> <p>12 MR. MELITO: Objection to the</p> <p>13 form.</p> <p>14 MR. SELLS: Can we go to</p> <p>15 Exhibit 29.</p> <p>16 (Whereupon, Plaintiff's Exhibit</p> <p>17 29, memo to file from Deliwe Kekana</p> <p>18 dated October 7, 2019, Bates stamped</p> <p>19 FIT27 through 43, was marked for</p> <p>20 identification as of this date.)</p> <p>21 Q. Do you recognize this?</p> <p>22 (Counsel is sharing the</p> <p>23 computer screen image.)</p> <p>24 A. Yes.</p> <p>25 MR. SELLS: Okay. For the</p>
<p style="text-align: right;">198</p> <p>1 D. KEKANA</p> <p>2 explain --</p> <p>3 MR. SELLS: No. What is it?</p> <p>4 What is it? Nicholas, answer the</p> <p>5 question.</p> <p>6 MR. MELITO: If you stop</p> <p>7 cutting me off, I will. I love to</p> <p>8 answer my question.</p> <p>9 It is not so much what</p> <p>10 documents, it is how you worded it.</p> <p>11 If you want to know what documents</p> <p>12 she reviewed --</p> <p>13 MR. SELLS: I want to know what</p> <p>14 the privilege is, that's what I want</p> <p>15 to know.</p> <p>16 MR. MELITO: Attorney/client</p> <p>17 privilege.</p> <p>18 MR. SELLS: What?</p> <p>19 MR. MELITO: Work product.</p> <p>20 MR. SELLS: Okay, got it.</p> <p>21 Attorney/client privilege. I see.</p> <p>22 Q. So, you said the last time you saw</p> <p>23 your report was before the global pandemic;</p> <p>24 is that what you testified to?</p> <p>25 MR. MELITO: Objection.</p>	<p style="text-align: right;">200</p> <p>1 D. KEKANA</p> <p>2 record, Exhibit 29 is a memo to file</p> <p>3 from Deliwe Kekana, dated October 7,</p> <p>4 2019; and it is Bates stamped</p> <p>5 starting page F-I-T27 through 43.</p> <p>6 MR. DRANOFF: Would it be</p> <p>7 possible to take a quick five-minute</p> <p>8 break?</p> <p>9 MR. SELLS: Yes.</p> <p>10 (Whereupon, a brief recess was</p> <p>11 taken at 4:12 p.m.; after which, the</p> <p>12 proceeding continued at 4:31 p.m. as</p> <p>13 follows.)</p> <p>14 MR. SELLS: Back on the record.</p> <p>15 Please scroll to page 16.</p> <p>16 (Counsel is sharing the</p> <p>17 computer screen image.)</p> <p>18 Q. Now, looking at what's on the</p> <p>19 screen. So, here we see in your</p> <p>20 investigative report, you talk about</p> <p>21 Respondent 4 who is Mary Davis, correct?</p> <p>22 A. That's correct.</p> <p>23 Q. Okay.</p> <p>24 And just to be clear, when you</p> <p>25 say -- and I'm reading, you could see my</p>

<p style="text-align: right;">201</p> <p>1 D. KEKANA</p> <p>2 pointer -- "In reviewing the context and</p> <p>3 circumstances of this complaint this</p> <p>4 investigator is unable to substantiate the</p> <p>5 complaint of discriminatory harassment."</p> <p>6 Then you write, "This report will be</p> <p>7 forwarded to the Office of Human Resources</p> <p>8 Management and Labor Relations for</p> <p>9 appropriate review."</p> <p>10 What does that mean?</p> <p>11 A. This is with regards to the</p> <p>12 Respondent's actions as a -- in her</p> <p>13 supervisory capacity.</p> <p>14 Q. Okay.</p> <p>15 So, is this what you wrote in your</p> <p>16 investigative summary regarding what you</p> <p>17 considered to be Dean Davis' failure to report</p> <p>18 a complaint of discrimination made to her from</p> <p>19 her subordinate?</p> <p>20 MR. MELITO: Objection.</p> <p>21 A. This was not my -- my determination</p> <p>22 as a finding of fact, but rather my</p> <p>23 recognizing that this matter should be</p> <p>24 investigated via Human Resources and</p> <p>25 addressed via Human Resources.</p>	<p style="text-align: right;">203</p> <p>1 D. KEKANA</p> <p>2 scroll down a little bit.</p> <p>3 Q. "Complainant stated she was deeply</p> <p>4 hurt and even more offended when Respondent 4</p> <p>5 told her, 'Well, historically she is</p> <p>6 correct.'" Respondent 3.</p> <p>7 Now, that was the 3/5th of a person</p> <p>8 comment that you are making reference to</p> <p>9 there, correct?</p> <p>10 MR. MELITO: Objection.</p> <p>11 A. That is in response to the</p> <p>12 Complainant's allegation. That quotation</p> <p>13 comes from the Complainant's statement.</p> <p>14 Q. Right, and you're talking about the</p> <p>15 3/5th of a person comment that Ms. Phillips</p> <p>16 complained to Dean Davis about regarding</p> <p>17 Marilyn Barton speaking to an intern or</p> <p>18 someone in the office, correct?</p> <p>19 MR. MELITO: Objection.</p> <p>20 A. This is excerpted from Complainant's</p> <p>21 statement in which she alleges that</p> <p>22 Respondent Number 3 was speaking to a</p> <p>23 work-study student and she then relayed that</p> <p>24 information to Respondent 4.</p> <p>25 Q. Right. And I am asking you, does</p>
<p style="text-align: right;">202</p> <p>1 D. KEKANA</p> <p>2 Q. Let's look at what you wrote. So</p> <p>3 Respondent 4, which you indicate as Dean</p> <p>4 Davis -- do you see where my pointer is?</p> <p>5 A. I don't see your pointer, no.</p> <p>6 Q. So where it says Respondent 4 stated</p> <p>7 that when Complainant brought forth</p> <p>8 complaints against Respondent 3 --" who is</p> <p>9 Respondent 3 in your report?</p> <p>10 A. I believe that Respondent 3 was</p> <p>11 Marilyn Barton. I don't have the key -- the</p> <p>12 legend which says which parties are there.</p> <p>13 But I believe, if I recall correctly, it's</p> <p>14 either -- I believe it's Marilyn Barton.</p> <p>15 MR. MELITO: Objection.</p> <p>16 MR. SELLS: We can scroll up a</p> <p>17 little bit. Stop.</p> <p>18 Q. So, Respondent 4 -- now it says,</p> <p>19 "Complainant alleges that Respondent 4 when</p> <p>20 Complainant brought fourth complaints</p> <p>21 involving Respondent 3, Respondent 4 did not</p> <p>22 respond correctly."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 MR. SELLS: If we could just</p>	<p style="text-align: right;">204</p> <p>1 D. KEKANA</p> <p>2 this have to do with the comment that</p> <p>3 Ms. Phillips complained to Dean Davis about</p> <p>4 when Marilyn Barton referred to</p> <p>5 African-Americans as 3/5ths of a person; is</p> <p>6 that right?</p> <p>7 MR. MELITO: Objection.</p> <p>8 Document speaks for itself.</p> <p>9 You can answer.</p> <p>10 A. I think where I'm getting stuck is</p> <p>11 there are pieces of your question is accurate</p> <p>12 and other piece where it's not --</p> <p>13 Q. I'm just trying to get you to</p> <p>14 identify Respondent 3 as Marilyn Barton. Do</p> <p>15 you understand that Respondent 3 was the one,</p> <p>16 Marilyn Barton, who said that</p> <p>17 African-Americans are 3/5ths of a person; is</p> <p>18 that correct?</p> <p>19 MR. MELITO: Objection --</p> <p>20 Q. -- I'm trying to get you to identify</p> <p>21 Respondent 3 as Marilyn Barton; is that</p> <p>22 correct?</p> <p>23 A. I can identify Respondent 3 as</p> <p>24 Marilyn Barton.</p> <p>25 Q. That's all I'm trying to get you to</p>

<p style="text-align: right;">205</p> <p>1 D. KEKANA</p> <p>2 do.</p> <p>3 So this was a complaint that</p> <p>4 Ms. Phillips brought to Dean Davis and Dean</p> <p>5 Davis, according to your summary and when you</p> <p>6 look -- when you talk about "complainant,"</p> <p>7 you're talking about Ms. Phillips, right?</p> <p>8 MR. MELITO: Objection.</p> <p>9 A. Correct.</p> <p>10 Q. And you say what Ms. Phillips says</p> <p>11 to you in that first sentence is that when</p> <p>12 she brought forth complaints involving</p> <p>13 Respondent 3, Marilyn Barton, that Respondent</p> <p>14 4, Dean Davis, did not respond correctly;</p> <p>15 that was part of Ms. Phillips's complaint,</p> <p>16 correct?</p> <p>17 MR. MELITO: Objection.</p> <p>18 MR. DRANOFF: I'll object to</p> <p>19 form.</p> <p>20 A. That is correct.</p> <p>21 Q. Okay.</p> <p>22 And what you say next is what</p> <p>23 Ms. Phillips said to Dean Davis was that "she</p> <p>24 was deeply hurt and even more offended when</p> <p>25 Dean Davis told her, "Well, historically,</p>	<p style="text-align: right;">207</p> <p>1 D. KEKANA</p> <p>2 Q. No. No. You wrote, "Respondent 4</p> <p>3 stated that when Complainant brought forth</p> <p>4 complaints against Respondent 3, she</p> <p>5 instructed the Complainant to speak with</p> <p>6 Respondent 3." That's what you wrote about</p> <p>7 what the dean said, right, or Dean Davis</p> <p>8 said?</p> <p>9 A. I think you're misrepresenting what</p> <p>10 is --</p> <p>11 Q. This is what you wrote. I'm not</p> <p>12 misrepresenting anything. I'm repeating what</p> <p>13 you wrote. You said, "Respondent 4 stated</p> <p>14 that when Complainant brought forth</p> <p>15 complaints against Respondent 3, she</p> <p>16 instructed the Complainant to speak with</p> <p>17 Respondent 3 and come back to speak with her</p> <p>18 if she had additional issues she wanted to</p> <p>19 discuss."</p> <p>20 You wrote that, right?</p> <p>21 MR. MELITO: Objection.</p> <p>22 A. If I can clarify --</p> <p>23 Q. No. No. No. I don't want you to</p> <p>24 clarify. I just want you to answer, Did you</p> <p>25 write that?</p>
<p style="text-align: right;">206</p> <p>1 D. KEKANA</p> <p>2 she's correct.'" That's what you have in</p> <p>3 your summary, correct?</p> <p>4 MR. MELITO: Objection.</p> <p>5 A. Correct.</p> <p>6 Q. And then as you go further what you</p> <p>7 say is that "and Respondent 4 stated that</p> <p>8 when Complainant brought forth complaints</p> <p>9 against Respondent 3, she instructed the</p> <p>10 Complainant to speak with Respondent 3 and</p> <p>11 come back to speak with her if she had</p> <p>12 additional issues she wanted to discuss."</p> <p>13 You wrote that, right?</p> <p>14 A. That is correct.</p> <p>15 Q. And you wrote that because you spoke</p> <p>16 with Dean Davis who told you that when</p> <p>17 Ms. Phillips came to her with the complaint</p> <p>18 about Marilyn Barton using 3/5th of a person</p> <p>19 that instead of taking that directly to HR or</p> <p>20 to the Affirmative Action Office, she</p> <p>21 directed Ms. Phillips to go back and speak</p> <p>22 with Ms. Barton, right?</p> <p>23 MR. MELITO: Objection.</p> <p>24 A. That is what was stated by</p> <p>25 Complainant.</p>	<p style="text-align: right;">208</p> <p>1 D. KEKANA</p> <p>2 MR. MELITO: Objection.</p> <p>3 A. (No Response.)</p> <p>4 Q. Did you write that?</p> <p>5 MR. MELITO: Objection.</p> <p>6 A. "Respondent 4 also stated to</p> <p>7 Complainant --"</p> <p>8 Q. No, no. I'm not asking you about</p> <p>9 that. I am asking you about the sentence</p> <p>10 that I just asked you, Did you write</p> <p>11 "Respondent 4 stated that when Complainant</p> <p>12 brought forth complaints against Respondent</p> <p>13 3, she instructed the Complainant to speak</p> <p>14 with Respondent 3 and come back to speak with</p> <p>15 her if she had additional issues she wanted</p> <p>16 to discuss."</p> <p>17 Did you write that?</p> <p>18 MR. MELITO: Objection to your</p> <p>19 tone and demeanor; but go ahead and</p> <p>20 answer.</p> <p>21 A. Yes --</p> <p>22 MR. SELLS: There's nothing</p> <p>23 wrong with my tone or demeanor --</p> <p>24 MR. MELITO: You're yelling at</p> <p>25 the witness.</p>

<p style="text-align: right;">209</p> <p>1 D. KEKANA</p> <p>2 MR. SELLS: I'm not yelling at</p> <p>3 anyone.</p> <p>4 MR. DRANOFF: It's getting</p> <p>5 there --</p> <p>6 MR. SELLS: Okay. Okay. Okay.</p> <p>7 I'm here in New York sitting in my</p> <p>8 office.</p> <p>9 Q. Now, please, did you write that,</p> <p>10 ma'am?</p> <p>11 MR. MELITO: Again, objection;</p> <p>12 but go ahead and answer.</p> <p>13 A. Yes.</p> <p>14 Q. You also wrote, "Respondent 4 also</p> <p>15 stated to Complainant that she would speak to</p> <p>16 Respondent 3, which Respondent 4 alleges she</p> <p>17 did."</p> <p>18 You wrote that too, correct?</p> <p>19 A. Yes.</p> <p>20 Q. Okay.</p> <p>21 So, based upon what Dean Davis told</p> <p>22 you, she did not report Ms. Phillips'</p> <p>23 complaints of discrimination to your office or</p> <p>24 HR; is that correct --</p> <p>25 MR. DRANOFF: Objection to</p>	<p style="text-align: right;">211</p> <p>1 D. KEKANA</p> <p>2 "this investigator is unable to substantiate</p> <p>3 the complaint of discriminatory harassment."</p> <p>4 That's what you wrote, right?</p> <p>5 MR. MELITO: Objection.</p> <p>6 A. Yes.</p> <p>7 Q. But you were able to substantiate</p> <p>8 that Dean Davis violated the</p> <p>9 antidiscrimination policy by failing to</p> <p>10 report Ms. Phillips' complaints of</p> <p>11 discrimination to your office or HR, correct?</p> <p>12 MR. DRANOFF: Objection to</p> <p>13 form.</p> <p>14 MR. MELITO: Objection.</p> <p>15 A. Can you repeat the question?</p> <p>16 (Whereupon, the requested</p> <p>17 portion of the transcript was read</p> <p>18 back.)</p> <p>19 A. I did not substantiate that; but</p> <p>20 rather forwarded that part of the -- of what</p> <p>21 was discovered to HR for appropriate review.</p> <p>22 Q. Well, let's talk about that.</p> <p>23 Because you just said that Dean</p> <p>24 Davis, based upon what she told you, she did</p> <p>25 not report Ms. Phillips' complaints of</p>
<p style="text-align: right;">210</p> <p>1 D. KEKANA</p> <p>2 form.</p> <p>3 MR. MELITO: Objection.</p> <p>4 Objection.</p> <p>5 Can you repeat the question.</p> <p>6 (Whereupon, the requested</p> <p>7 portion of the transcript was read</p> <p>8 back.)</p> <p>9 MR. MELITO: And objection to</p> <p>10 the form.</p> <p>11 A. That is correct.</p> <p>12 Q. And you know that when a dean has an</p> <p>13 allegation or a complaint that is made to</p> <p>14 them by the subordinate at F.I.T. regarding</p> <p>15 race discrimination or retaliation, that they</p> <p>16 are required to make a complaint to HR and/or</p> <p>17 your office, correct?</p> <p>18 MR. MELITO: Objection.</p> <p>19 A. That is correct.</p> <p>20 Q. But nowhere in your report did you</p> <p>21 say that Dean Davis violated F.I.T.'s</p> <p>22 discrimination policy, did you?</p> <p>23 MR. MELITO: Objection.</p> <p>24 A. No.</p> <p>25 Q. And what you wrote instead was that,</p>	<p style="text-align: right;">212</p> <p>1 D. KEKANA</p> <p>2 discrimination to HR or you and your office,</p> <p>3 correct?</p> <p>4 MR. MELITO: Objection.</p> <p>5 MR. DRANOFF: Join.</p> <p>6 A. That's correct.</p> <p>7 Q. Though it was substantiated, she</p> <p>8 didn't do what she was supposed to do; you</p> <p>9 were able to substantiate that by asking her,</p> <p>10 correct?</p> <p>11 MR. MELITO: Objection.</p> <p>12 A. As a finding of fact, that is what I</p> <p>13 discovered.</p> <p>14 Q. So your answer is, yes, correct, you</p> <p>15 were --</p> <p>16 MR. MELITO: Objection --</p> <p>17 Q. -- able to substantiate, she did not --</p> <p>18 when I say she, Dean Davis did not report</p> <p>19 Ms. Phillips's complaint of discrimination to</p> <p>20 HR or your office in violation of the</p> <p>21 antidiscrimination policy for F.I.T.,</p> <p>22 correct?</p> <p>23 MR. MELITO: Objection to form.</p> <p>24 MR. DRANOFF: Object as well.</p> <p>25 A. I made a finding of fact.</p>

<p style="text-align: right;">213</p> <p>1 D. KEKANA</p> <p>2 Q. So, is the answer to my question</p> <p>3 yes?</p> <p>4 MR. MELITO: Objection, asked</p> <p>5 and answered.</p> <p>6 THE WITNESS: Am I to answer</p> <p>7 that question again?</p> <p>8 Q. Yes.</p> <p>9 MR. MELITO: If you want it</p> <p>10 read back, if you understand, you can</p> <p>11 ask to have it read back.</p> <p>12 A. Can you read back and the previous</p> <p>13 response to said question.</p> <p>14 (Whereupon, the requested</p> <p>15 portion of the transcript was read</p> <p>16 back.)</p> <p>17 A. The answer is yes.</p> <p>18 Q. If we scroll down to "investigator's</p> <p>19 addendum and notes," did you write this</p> <p>20 addendum?</p> <p>21 A. Yes.</p> <p>22 Q. What's the point of an "addendum"?</p> <p>23 A. This would be anything that would be</p> <p>24 extraneous with regards to the matter that</p> <p>25 was investigated.</p>	<p style="text-align: right;">215</p> <p>1 D. KEKANA</p> <p>2 2019, you knew that Ms. Phillips had already</p> <p>3 filed suit, right?</p> <p>4 MR. MELITO: Objection.</p> <p>5 Outside the scope of the 30(b) (6).</p> <p>6 If she knows in her personal</p> <p>7 capacity.</p> <p>8 A. No, I was not aware that she had</p> <p>9 filed suit.</p> <p>10 Q. You were not aware, okay.</p> <p>11 So you knew that Ms. Phillips had</p> <p>12 brought her complaint to you in March of</p> <p>13 2018, right?</p> <p>14 A. Correct.</p> <p>15 Q. And so, it took you a year and</p> <p>16 almost six months to put this investigation</p> <p>17 to rest; is that right?</p> <p>18 MR. MELITO: Objection.</p> <p>19 A. I'm sorry. Can you repeat that</p> <p>20 question?</p> <p>21 Q. It took you a year and six months to</p> <p>22 closeout this investigation, right --</p> <p>23 MR. MELITO: Objection.</p> <p>24 A. That's...</p> <p>25 Q. I'm sorry?</p>
<p style="text-align: right;">214</p> <p>1 D. KEKANA</p> <p>2 Q. What is F.I.T.'s policy regarding</p> <p>3 these addendums and notes as they relate to</p> <p>4 investigators putting them in?</p> <p>5 A. There is no such policy on addendums</p> <p>6 or notes for the file.</p> <p>7 Q. Got it.</p> <p>8 And what is F.I.T.'s policy</p> <p>9 regarding investigators who feel that they</p> <p>10 might have been offended by a complaint; is</p> <p>11 there any policy about that?</p> <p>12 MR. MELITO: Objection. That's</p> <p>13 out of the scope of the 30(b) (6).</p> <p>14 It's in a personal capacity.</p> <p>15 A. No, there is no such policy.</p> <p>16 Q. So, what was your point in saying</p> <p>17 that "the Complainant was combative and</p> <p>18 argumentative"; what was your point in saying</p> <p>19 that?</p> <p>20 A. That was noting the demeanor of the</p> <p>21 Complainant during her meetings and</p> <p>22 interviews with me as investigator.</p> <p>23 Q. Got it.</p> <p>24 So, certainly by this time, by the</p> <p>25 time you wrote this document in October of</p>	<p style="text-align: right;">216</p> <p>1 D. KEKANA</p> <p>2 MR. MELITO: You can answer,</p> <p>3 Ms. Kekana.</p> <p>4 THE WITNESS: Okay. I wasn't</p> <p>5 sure if someone else was speaking, so</p> <p>6 I stopped speaking.</p> <p>7 A. That's correct.</p> <p>8 Q. All right.</p> <p>9 Now, you write also in your addendum</p> <p>10 and notes, "May 2019" you wrote "my office was</p> <p>11 alerted by Complainant that Respondent</p> <p>12 attacked her stating I'm going to fucking kill</p> <p>13 you."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. You say that "the matter was</p> <p>17 addressed through the disciplinary process by</p> <p>18 the Office of Human Resources."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. But you know that Ms. Phillips had</p> <p>22 complained about retaliation when she spoke</p> <p>23 to you about the May 2019 incident; you know</p> <p>24 that, right?</p> <p>25 MR. MELITO: Objection.</p>

<p style="text-align: right;">217</p> <p>1 D. KEKANA</p> <p>2 A. What Ms. Phillips let me know what</p> <p>3 happened in May of 2019 she did not state</p> <p>4 that this was retaliatory, but rather stated</p> <p>5 that she was -- that this incident had</p> <p>6 occurred and that she was fearful.</p> <p>7 Q. Are you saying that Ms. Phillips did</p> <p>8 not say that what Marilyn Barton did was</p> <p>9 retaliatory; is that what you are claiming?</p> <p>10 A. Not in May of 2019.</p> <p>11 Q. No? Well, when did she make the</p> <p>12 complaint that it was retaliatory?</p> <p>13 A. This was during the closeout meeting</p> <p>14 that was held that summer.</p> <p>15 Q. You say "at the investigation</p> <p>16 closeout meeting, this investigator addressed</p> <p>17 this with Complainant quoting the EEOC</p> <p>18 guidance on zero tolerance."</p> <p>19 What was that about?</p> <p>20 MR. MELITO: Objection.</p> <p>21 A. During the intake interview as well</p> <p>22 as in her statement, Complainant alleged that</p> <p>23 there's a zero tolerance policy on complaints</p> <p>24 of discrimination. During the closeout</p> <p>25 meeting I quoted and read aloud the EEOC</p>	<p style="text-align: right;">219</p> <p>1 D. KEKANA</p> <p>2 that, what happened on that day?</p> <p>3 A. As it was reported to me, and this</p> <p>4 is by the Complainant, Respondent pushed the</p> <p>5 Complainant right after saying, "I can't take</p> <p>6 this anymore. I'm going fucking kill you."</p> <p>7 Q. Now when you say "the Respondent,"</p> <p>8 are you talking about Ms. Barton?</p> <p>9 A. Yes, that is what she alleged.</p> <p>10 Q. So, Ms. Barton told you that she</p> <p>11 pushed Ms. Phillips?</p> <p>12 MR. MELITO: Objection.</p> <p>13 A. No, Complainant Marjorie Phillips</p> <p>14 told me that Respondent Marilyn Barton had</p> <p>15 pushed her after making those statements that</p> <p>16 I had said earlier.</p> <p>17 Q. I got it.</p> <p>18 MR. SELLS: We can go to</p> <p>19 Exhibit 20.</p> <p>20 (Whereupon, Plaintiff's Exhibit</p> <p>21 20, two-page document Bates stamped</p> <p>22 FIT141 and 142, was marked for</p> <p>23 identification as of this date.)</p> <p>24 (Counsel is sharing the</p> <p>25 computer screen image.)</p>
<p style="text-align: right;">218</p> <p>1 D. KEKANA</p> <p>2 guidance on zero tolerance as a policy, which</p> <p>3 is something the EEOC is not in support of.</p> <p>4 Q. And then you say, "this investigator</p> <p>5 read the definition of retaliation from the</p> <p>6 college's policy and explained why the</p> <p>7 incident in May 2019 was not retaliatory."</p> <p>8 Is that right?</p> <p>9 A. That is correct.</p> <p>10 Q. Then Ms. Phillips told you that she</p> <p>11 believed you didn't understand retaliation;</p> <p>12 is that right --</p> <p>13 MR. MELITO: Objection.</p> <p>14 A. (No Response.)</p> <p>15 Q. Is that right?</p> <p>16 MR. MELITO: Objection.</p> <p>17 A. That is --</p> <p>18 MR. MELITO: Go ahead.</p> <p>19 A. That is correct.</p> <p>20 MR. SELLS: We can take down</p> <p>21 this document.</p> <p>22 (Screen sharing has ended).</p> <p>23 Q. Now, let's talk about the May 16,</p> <p>24 2019 incident that you say was not</p> <p>25 retaliation. What's your understanding of</p>	<p style="text-align: right;">220</p> <p>1 D. KEKANA</p> <p>2 Q. Have you seen this before?</p> <p>3 A. No, I have not.</p> <p>4 MR. SELLS: Okay.</p> <p>5 This is a two-page document</p> <p>6 Bates stamped FIT141 and 142.</p> <p>7 Q. Do you see that? Going to the first</p> <p>8 page it says, "MD Barton statement."</p> <p>9 MR. MELITO: I'm going to</p> <p>10 object to the way you are introducing</p> <p>11 the exhibits and not allowing the</p> <p>12 witness to review prior to</p> <p>13 questioning.</p> <p>14 Q. According to the statement, MD</p> <p>15 Barton's statement, I'm just going to read</p> <p>16 it. "I directed the student --" reading from</p> <p>17 starting on -- "May 16th, 2019, at about</p> <p>18 10:30 a.m. a student arrived in the dean's</p> <p>19 office requesting help attaining commencement</p> <p>20 regalia for graduation."</p> <p>21 You see that, right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay.</p> <p>24 You understand this to be a</p> <p>25 statement that a defendant in this lawsuit,</p>

<p style="text-align: right;">221</p> <p>1 D. KEKANA</p> <p>2 Marilyn Barton, gave concerning the May 16th,</p> <p>3 2019 incident, correct?</p> <p>4 A. That is what I read here, yes.</p> <p>5 Q. So, now if we scroll down to the</p> <p>6 paragraph that says "so I suggested to</p> <p>7 Ms. Phillips she share her concerns with the</p> <p>8 dean, and that I didn't want to discuss the</p> <p>9 matter with her. She continued her critical</p> <p>10 commentary and questioning of my actions in a</p> <p>11 strident tone."</p> <p>12 "In response, I told her loudly and</p> <p>13 firmly to desist. She continued and at some</p> <p>14 point got up and approached and reached</p> <p>15 toward me in an uncomfortably close manner</p> <p>16 which made me feel threatened. The incident</p> <p>17 ended when another person entered our office</p> <p>18 and I used the opportunity to remove myself</p> <p>19 from this stressful situation."</p> <p>20 "Although I raised my voice in</p> <p>21 response to Ms. Phillips' unrelenting</p> <p>22 criticism of me in my decision, her approach</p> <p>23 towards me made me feel harassed and then</p> <p>24 menaced."</p> <p>25 You see that?</p>	<p style="text-align: right;">223</p> <p>1 D. KEKANA</p> <p>2 don't have to answer that.</p> <p>3 MR. SELLS: No, it's a</p> <p>4 question.</p> <p>5 Q. Do you think F.I.T. is making this</p> <p>6 up?</p> <p>7 MR. MELITO: Objection. Again,</p> <p>8 you are harassing, tone, demeanor;</p> <p>9 but you could go ahead and answer in</p> <p>10 your personal capacity. You can go</p> <p>11 ahead and answer.</p> <p>12 A. No, I do not think F.I.T. is making</p> <p>13 this up.</p> <p>14 MR. SELLS: Got it. We can</p> <p>15 take down the document.</p> <p>16 (Screen share has stopped.)</p> <p>17 MR. SELLS: Now we could put up</p> <p>18 Exhibit 33.</p> <p>19 (Whereupon, Plaintiff's Exhibit</p> <p>20 33, three-page document Bates stamped</p> <p>21 FIT171 through 173, was marked for</p> <p>22 identification as of this date.)</p> <p>23 (Counsel is sharing the</p> <p>24 computer screen image.)</p> <p>25 MR. SELLS: Exhibit 33 is Bates</p>
<p style="text-align: right;">222</p> <p>1 D. KEKANA</p> <p>2 A. Yes.</p> <p>3 Q. She then goes on to say, "I also</p> <p>4 feel Ms. Phillips' critical comments were</p> <p>5 unwanted, unwarranted and abusive. Things</p> <p>6 like this make it harder for us to do our job</p> <p>7 in a quiet, friendly and collegial office</p> <p>8 setting."</p> <p>9 "This incident and numerous previous</p> <p>10 incidents involving Ms. Phillips have created</p> <p>11 a bullying, unhealthy and unproductive work</p> <p>12 environment. "</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. So, this is how Ms. Barton described</p> <p>16 the incident in her own words; is that right?</p> <p>17 MR. MELITO: Objection. Lacks</p> <p>18 foundation and to form.</p> <p>19 A. (No Response.)</p> <p>20 Q. You can answer.</p> <p>21 A. I'm not sure. It says it's her</p> <p>22 statement.</p> <p>23 Q. Well, this came from F.I.T.; do you</p> <p>24 think F.I.T. is making stuff up?</p> <p>25 MR. MELITO: Objection. You</p>	<p style="text-align: right;">224</p> <p>1 D. KEKANA</p> <p>2 stamped FIT171 through 173; it is a</p> <p>3 three-page document.</p> <p>4 If we could go to the first</p> <p>5 page again.</p> <p>6 Q. Do you recognize this as being a</p> <p>7 meeting involving Marilyn Barton -- notes, I</p> <p>8 guess, from a meeting involving Debra Peyton</p> <p>9 Jones, Felix Rivera Perez, Marilyn Barton,</p> <p>10 Andre Nunez and Natacha Unelus?</p> <p>11 MR. MELITO: Objection.</p> <p>12 A. This is --</p> <p>13 MR. MELITO: Go ahead.</p> <p>14 Q. I'm sorry?</p> <p>15 A. This is first I'm seeing of it; but</p> <p>16 that's what it appears to be --</p> <p>17 Q. You indicated that the F.I.T.</p> <p>18 procedure when investigations of retaliation</p> <p>19 or discrimination are conducted and someone</p> <p>20 summarizes the meeting that they identify --</p> <p>21 or the statement they identify all the people</p> <p>22 who are in attendance; is that correct?</p> <p>23 MR. MELITO: Objection.</p> <p>24 A. That is correct.</p> <p>25 Q. Who is Debra Peyton Jones; do you</p>

<p style="text-align: right;">225</p> <p>1 D. KEKANA</p> <p>2 know that person?</p> <p>3 A. Debra Peyton Jones is a former</p> <p>4 employee of the college. I believe she's</p> <p>5 also served as a UCE representative.</p> <p>6 Q. When you say a "former employee," in</p> <p>7 what department?</p> <p>8 A. In the Department of Student Life.</p> <p>9 Q. Okay.</p> <p>10 Do you know Felix Rivera Perez?</p> <p>11 A. I do.</p> <p>12 Q. Who is that?</p> <p>13 A. He is an employee of the college.</p> <p>14 Q. When you say "employee of the</p> <p>15 college," you talk about F.I.T.?</p> <p>16 A. That is correct. An employee of</p> <p>17 F.I.T.</p> <p>18 Q. In what capacity?</p> <p>19 A. I'm not certain. I cannot recall</p> <p>20 his title; but he works in the Career and</p> <p>21 Internship Center.</p> <p>22 Q. Andre Nunez, who is he?</p> <p>23 A. Andre Nunez is a former employee of</p> <p>24 the college who worked in Human Resources.</p> <p>25 Q. And Natacha Unelus, who is that?</p>	<p style="text-align: right;">227</p> <p>1 D. KEKANA</p> <p>2 in the commencement exercise; but she didn't</p> <p>3 have regalia. I let her know that she could</p> <p>4 run to the book store and talk to Carla</p> <p>5 Bowens, the store manager. After 15 minutes,</p> <p>6 she returned and told me that CB -- Carla</p> <p>7 Bowens -- said only you, Graduate Studies, can</p> <p>8 give me the regalia."</p> <p>9 "The regalia we had, each had one of</p> <p>10 the student's name labeled on it. I talked to</p> <p>11 Carla Bowens -- CB -- and told her we are not</p> <p>12 sure if we have them; but if the student comes</p> <p>13 tomorrow, Friday, I can try and help her. I</p> <p>14 hung up and thanked her.</p> <p>15 "The student looked upset. She told</p> <p>16 me she needed to tell her family because she</p> <p>17 invited them to watch commencement. I knew I</p> <p>18 was gonna be out Friday and not able to help</p> <p>19 her, but I wanted to give her one. We have</p> <p>20 numerous regalia that people never pick-up. I</p> <p>21 told her to keep it on the "QT"; but I would</p> <p>22 let her borrow regalia and asked her to bring</p> <p>23 it back when she was done. She was thankful</p> <p>24 and she was left."</p> <p>25 "At this point, Marjorie was</p>
<p style="text-align: right;">226</p> <p>1 D. KEKANA</p> <p>2 A. Natacha Unelus is an employee of the</p> <p>3 college and works in Human Resources.</p> <p>4 Q. All right.</p> <p>5 So now, you see -- and I take it the</p> <p>6 initials, Andre Nunez, A-N introduces group,</p> <p>7 the roles, the process and policies,</p> <p>8 confidentiality and non-retaliation; do you</p> <p>9 see that?</p> <p>10 A. Yes. I think it just scrolled up;</p> <p>11 but yes, I see that.</p> <p>12 Q. All right.</p> <p>13 Then the first question comes up,</p> <p>14 "In your own words, please tell us what</p> <p>15 happened on May 16th, 2019 between yourself</p> <p>16 and Marjorie Phillips?" And this is what</p> <p>17 Marilyn Barton, MB, this is what she had to</p> <p>18 say:</p> <p>19 "I will tell you what happened. It</p> <p>20 started about 10:30 shortly after I arrived to</p> <p>21 Room E-315. The schedule I work is 10:00 a.m.</p> <p>22 to 6:00 p.m. I arrived at work at 10:00. It</p> <p>23 was a beautiful day. Shortly after I</p> <p>24 arrived -- about 10:10, 10:20 -- a student</p> <p>25 walked in and said she wanted to participate</p>	<p style="text-align: right;">228</p> <p>1 D. KEKANA</p> <p>2 observing, then I went back to my seat. I was</p> <p>3 in and out. I was making a cup of coffee and</p> <p>4 then MP -- Marjorie Phillips -- said to me</p> <p>5 "What right do you have to privilege one</p> <p>6 student over all the others? You don't</p> <p>7 realize how hard it is for students to come up</p> <p>8 with money for regalia.' I'm not gonna ask</p> <p>9 the student for money. My feeling was to help</p> <p>10 the student as quickly as possible because I</p> <p>11 was out the next day. Carla Bowens said --"</p> <p>12 or -- "CB said only the graduate school maybe</p> <p>13 she didn't make it clear to CB that she didn't</p> <p>14 prepare."</p> <p>15 "I loaned her one. It seemed like</p> <p>16 the quickest way to help the student. She</p> <p>17 said, 'You don't have the right to do that' --</p> <p>18 and that's in quotes -- 'You don't have the</p> <p>19 right to do that.' If MP -- Marjorie</p> <p>20 Phillips -- had a problem, I told her to take</p> <p>21 it up to the dean."</p> <p>22 "I was pushed to it. I felt bullied</p> <p>23 and she pushes me to my reaction. I am</p> <p>24 ashamed of my behavior. I felt awful. I was</p> <p>25 yelling in impolite language. I told her to</p>

<p style="text-align: right;">229</p> <p>1 D. KEKANA</p> <p>2 'shut the fuck up. I will kill you' in a</p> <p>3 metaphorically way. I'm really embarrassed;</p> <p>4 but for years and years, there has been</p> <p>5 constant belittlement and constant comments.</p> <p>6 She chatters all day and it is endless. She</p> <p>7 says things that are inappropriate, and I have</p> <p>8 been trying to help in the office. She talked</p> <p>9 to people in a denigrating manner. I'm sorry;</p> <p>10 it was the last straw over years of</p> <p>11 commentary."</p> <p>12 MR. SELLS: We could scroll</p> <p>13 down. Stop.</p> <p>14 Q. She then is asked the question by</p> <p>15 NU, "Was there anything between you and MB</p> <p>16 when you approached her?" That's question.</p> <p>17 Barton says, "I had coffee cups and stirrers</p> <p>18 in my hand. Anton Baptist was behind me. I</p> <p>19 told him I was -- AB -- leaving. I'm not</p> <p>20 sure if Natacha Degan was there. I went into</p> <p>21 AB's office. It sounds like it went on</p> <p>22 forever, but it all happened quickly."</p> <p>23 "She ---" Marjorie Phillips "--- was</p> <p>24 sitting down with her back to me, maybe four</p> <p>25 feet. I stopped there and I said, 'Shut the</p>	<p style="text-align: right;">231</p> <p>1 D. KEKANA</p> <p>2 accused me of racism." Does that ring a bell</p> <p>3 to you --</p> <p>4 MR. MELITO: Objection.</p> <p>5 Q. Does that ring a bell to you --</p> <p>6 MR. MELITO: Objection.</p> <p>7 Q. -- Ms. Kekana?</p> <p>8 A. I --</p> <p>9 Q. Ms. Kekana, I am asking you a</p> <p>10 question. Does that ring a bell that</p> <p>11 Marjorie Phillips accused Marilyn Barton of</p> <p>12 racism? Do you remember that?</p> <p>13 MR. MELITO: Objection.</p> <p>14 A. Yes, I recall the accusation of</p> <p>15 racism.</p> <p>16 Q. Got it.</p> <p>17 And just so we're clear, your</p> <p>18 definition of "retaliation" is when a person,</p> <p>19 a Respondent, is accused of discriminatory</p> <p>20 behavior and then acts in a way that is</p> <p>21 harmful to the person that makes the</p> <p>22 complaint, right?</p> <p>23 MR. MELITO: Objection.</p> <p>24 A. Those are not the words I used to</p> <p>25 define retaliation. I would define</p>
<p style="text-align: right;">230</p> <p>1 D. KEKANA</p> <p>2 fuck up. Don't criticize me.' I was really</p> <p>3 mad. I might have been at the divider at her</p> <p>4 desk with my arm on it. She got up, started</p> <p>5 walking towards me, she did put her hands on</p> <p>6 me. I think she did, and then AB walked in.</p> <p>7 I don't think I touched her, it happened so</p> <p>8 quickly I think I was holding a coffee cuff</p> <p>9 and told her to keep away from me."</p> <p>10 Then NU asks the question, "Do you</p> <p>11 recall if it was after or before the 'shut</p> <p>12 the fuck up'? Walk me through it." And so,</p> <p>13 Marilyn Barton says, "It all happened</p> <p>14 concurrently. She was telling me to calm</p> <p>15 down, and that's when AB walked in. It was a</p> <p>16 very short altercation and then I left. I</p> <p>17 was upset because I feel like it's a bullying</p> <p>18 environment and it's been years. There are</p> <p>19 many things she's said to me. There was a</p> <p>20 situation where she accused me of racism."</p> <p>21 Now, you see that?</p> <p>22 A. (No Response.)</p> <p>23 Q. Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. "There was a situation where she</p>	<p style="text-align: right;">232</p> <p>1 D. KEKANA</p> <p>2 "retaliation" as adverse treatment as a</p> <p>3 result of someone participating in an</p> <p>4 investigation.</p> <p>5 Q. Got it.</p> <p>6 And "adverse treatment," would you</p> <p>7 define "adverse treatment" as an employee</p> <p>8 having to endure things at work that would</p> <p>9 negatively impact their ability to do their</p> <p>10 jobs?</p> <p>11 MR. MELITO: Objection.</p> <p>12 A. "Adverse treatment" would be</p> <p>13 treatment that would affect someone's ability</p> <p>14 to do their job.</p> <p>15 Q. And if someone was threatened with</p> <p>16 being killed, if someone was yelled at and</p> <p>17 screamed at while they were trying to do</p> <p>18 their job, would that negatively impact their</p> <p>19 ability to do their jobs?</p> <p>20 MR. MELITO: Objection. Again,</p> <p>21 this is in a personal capacity and</p> <p>22 objection to form.</p> <p>23 A. In my personal capacity, that is</p> <p>24 possible.</p> <p>25 Q. Let's go further.</p>

<p style="text-align: right;">233</p> <p>1 D. KEKANA</p> <p>2 The question, "Did you have issues</p> <p>3 with her prior to the investigation?" What</p> <p>4 Marilyn Barton says is, "The environment in</p> <p>5 the office, it's toxic. Been like this for</p> <p>6 years. I have been pushed and pushed. Mary</p> <p>7 Davis knows about the situation. It is</p> <p>8 ongoing. I flinch when she walks in the</p> <p>9 room, it's uncomfortable. I have spoken to</p> <p>10 Mary Davis about it prior. I don't tell her</p> <p>11 every single thing. MP, Marjorie Phillips</p> <p>12 says certain things even to other people."</p> <p>13 Question, "NU: It was alleged that</p> <p>14 you charged towards MP. Could you provide a</p> <p>15 response to that?" And what Marlin Barton</p> <p>16 says is, "I was walking out and I stopped at</p> <p>17 her desk which is when I was yelling at her.</p> <p>18 I don't deny it. I am ashamed I lost my</p> <p>19 temper. I was pushed. It was the last</p> <p>20 straw. Marjorie complained about me, it went</p> <p>21 up to Affirmative Action and there still is</p> <p>22 no resolution."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. That is Marilyn Barton saying that</p>	<p style="text-align: right;">235</p> <p>1 D. KEKANA</p> <p>2 Q. And this is a clear case, a textbook</p> <p>3 case of retaliation, when someone who is</p> <p>4 aware that a person has made a complaint of</p> <p>5 discrimination against them responds by</p> <p>6 losing their temper, yelling at them and</p> <p>7 telling them that they will kill them; is it</p> <p>8 not?</p> <p>9 MR. MELITO: Again, object to</p> <p>10 form. Object to legal conclusion.</p> <p>11 Object to argumentative.</p> <p>12 And again, you're testifying,</p> <p>13 but objection.</p> <p>14 A. I will not characterize it in manner</p> <p>15 that you characterized it. But according to</p> <p>16 what Marilyn Barton attests, she states that</p> <p>17 it was retal- -- is evidence that it was</p> <p>18 retaliatory.</p> <p>19 Q. Okay.</p> <p>20 MR. SELLS: We can take down</p> <p>21 the document.</p> <p>22 (Screen sharing has ended.)</p> <p>23 Q. You, in your closeout meeting with</p> <p>24 Ms. Phillips in October 2019, explained to</p> <p>25 her how what she said about Marilyn Barton</p>
<p style="text-align: right;">234</p> <p>1 D. KEKANA</p> <p>2 she approached and yelled at Marjorie</p> <p>3 Phillips because "Marjorie complained about</p> <p>4 me and it went up to Affirmative Action."</p> <p>5 Do you see that?</p> <p>6 MR. MELITO: Objection.</p> <p>7 Document speak for itself. You are</p> <p>8 testifying on behalf of Marilyn</p> <p>9 Barton.</p> <p>10 A. (No Response.)</p> <p>11 Q. Answer the question, please.</p> <p>12 A. I see that on this document. That's</p> <p>13 what it states.</p> <p>14 Q. This is a clear case of retaliation</p> <p>15 out of the words of Marilyn Barton; isn't</p> <p>16 that correct?</p> <p>17 MR. MELITO: Objection. You're</p> <p>18 testifying -- argumentative. I'll</p> <p>19 objection to form.</p> <p>20 A. Can you repeat, if that is question.</p> <p>21 I'm not certain what it was.</p> <p>22 (Whereupon, the requested</p> <p>23 portion of the transcript was read</p> <p>24 back.)</p> <p>25 A. Yes, I see it.</p>	<p style="text-align: right;">236</p> <p>1 D. KEKANA</p> <p>2 was not retaliation; isn't that right?</p> <p>3 MR. MELITO: Objection.</p> <p>4 A. Can you repeat? I'm sorry. I think</p> <p>5 when you yell it reverberates on my end --</p> <p>6 Q. I'm not yelling; so I don't know</p> <p>7 what your problem is.</p> <p>8 MR. MELITO: Again, object to</p> <p>9 the witness -- you're yelling. The</p> <p>10 witness said -- your yelling; there</p> <p>11 is no need to go back at the witness.</p> <p>12 MR. SELLS: I'm not yelling.</p> <p>13 I'm not yelling.</p> <p>14 MR. MELITO: Please, repeat the</p> <p>15 question in a normal tone --</p> <p>16 Q. In your closeout meeting with</p> <p>17 Ms. Phillips, when you told her, according to</p> <p>18 your addendum, that Marilyn Barton did not</p> <p>19 retaliate against her, she told you that you</p> <p>20 didn't know what you were talking about,</p> <p>21 right?</p> <p>22 MR. MELITO: Objection.</p> <p>23 A. Is the question what she said?</p> <p>24 Q. Yes.</p> <p>25 A. She stated that she disagreed with</p>

<p style="text-align: right;">237</p> <p>1 D. KEKANA</p> <p>2 me because everyone else that she has spoken</p> <p>3 to didn't see it that way.</p> <p>4 Q. Right.</p> <p>5 But you didn't know that Marilyn</p> <p>6 Barton admitted that she yelled and screamed</p> <p>7 at Ms. Phillips and threatened to kill her</p> <p>8 and told her to "shut the fuck up" because</p> <p>9 Ms. Phillips had made a complaint of racism</p> <p>10 against her that went up to Affirmative</p> <p>11 Action --</p> <p>12 MR. MELITO: Objection --</p> <p>13 Q. -- you didn't know that, right --</p> <p>14 MR. MELITO: Objection to form.</p> <p>15 Objection, again, to your tone. You</p> <p>16 can save the theatrics, the</p> <p>17 obscenities and emphasizing them.</p> <p>18 And this is, again, outside the</p> <p>19 scope of the 30(b)(6). Please,</p> <p>20 answer to the best of your ability</p> <p>21 and your personal capacity.</p> <p>22 A. So to my knowledge, when I learned</p> <p>23 of the complaint in May 2019, I only had what</p> <p>24 was presented to me by Complainant Marjorie</p> <p>25 Phillips. In my estimation, I did not have</p>	<p style="text-align: right;">239</p> <p>1 D. KEKANA</p> <p>2 you stop being combative to the</p> <p>3 witness, please.</p> <p>4 MR. SELLS: I'm not being</p> <p>5 combative.</p> <p>6 Look, you can say whatever you</p> <p>7 want, Nicholas. You can lie on the</p> <p>8 record and say whatever you want to</p> <p>9 and say that the witness is this or</p> <p>10 that I'm doing that. You can lie as</p> <p>11 much as you want. But you know what,</p> <p>12 the truth is going to come out, all</p> <p>13 right. So, the question that is on</p> <p>14 the table --</p> <p>15 MR. MELITO: No. Before that --</p> <p>16 MR. SELLS: The question on the</p> <p>17 table --</p> <p>18 MR. MELITO: Before you --</p> <p>19 MR. SELLS: The question that</p> <p>20 is on the table is whether or not the</p> <p>21 two statements are the same and that</p> <p>22 is the question --</p> <p>23 MR. MELITO: Do --</p> <p>24 MR. MENKEN: This is going on</p> <p>25 the entire day, and you have</p>
<p style="text-align: right;">238</p> <p>1 D. KEKANA</p> <p>2 and did not participate in the investigation</p> <p>3 conducted by HR as it is stated in the</p> <p>4 addendum notes.</p> <p>5 Q. Well, you have now seen two very</p> <p>6 different statements that Marilyn Barton gave</p> <p>7 in connection with that May 16th, 2019</p> <p>8 incident, right?</p> <p>9 A. I --</p> <p>10 MR. MELITO: Objection.</p> <p>11 THE WITNESS: Sorry.</p> <p>12 A. I see statements that you have</p> <p>13 presented here.</p> <p>14 Q. And they are very different.</p> <p>15 MR. MELITO: Objection --</p> <p>16 Q. -- right; they are very different?</p> <p>17 MR. MELITO: Objection to form,</p> <p>18 mischaracterizing them; they speak</p> <p>19 for themselves.</p> <p>20 Q. You can answer.</p> <p>21 A. I can't attest to them being</p> <p>22 different --</p> <p>23 Q. Oh, you think they're the same? You</p> <p>24 think the two statements are the same --</p> <p>25 MR. MELITO: Objection. Can</p>	<p style="text-align: right;">240</p> <p>1 D. KEKANA</p> <p>2 repeatedly --</p> <p>3 MR. SELLS: Listen, Bruce.</p> <p>4 Bruce. Stop. Stop --</p> <p>5 MR. MENKEN: Oh, don't tell me</p> <p>6 to "stop." Don't tell me to</p> <p>7 "stop" --</p> <p>8 MR. SELLS: Stop --</p> <p>9 MR. MENKEN: Don't tell me to</p> <p>10 stop, pal --</p> <p>11 MR. SELLS: Your client lies,</p> <p>12 right. It's out there -- you can</p> <p>13 yell all you want; but the truth is</p> <p>14 going to come out --</p> <p>15 MR. MENKEN: Go in front of the</p> <p>16 jury and do whatever you want --</p> <p>17 (Mr. Sells has turned off his</p> <p>18 camera and microphone and exited the</p> <p>19 deposition.)</p> <p>20 MR. MELITO: Do not go off the</p> <p>21 record right now. I have to respond</p> <p>22 to his allegations of lying. They</p> <p>23 are completely inappropriate. I'm</p> <p>24 doing the objections for the record.</p> <p>25 Since this is not a recording, I'm</p>

<p style="text-align: right;">241</p> <p>1 D. KEKANA</p> <p>2 well within my rights and entitled to</p> <p>3 note for the record his demeanor of</p> <p>4 yelling, his voice, his harassment of</p> <p>5 the witness and in no way shape or</p> <p>6 form am I lying about these</p> <p>7 objections. So, and I will also --</p> <p>8 MR. MENKEN: Completely agreed --</p> <p>9 MR. MELITO: I will also note</p> <p>10 Mr. Sells turned off his mic, turned</p> <p>11 off his camera and abruptly left the</p> <p>12 deposition.</p> <p>13 MR. MENKEN: This is not the</p> <p>14 way to ask questions of a witness;</p> <p>15 it's been going on the entire day, to</p> <p>16 browbeat people like that.</p> <p>17 MR. MENKEN: Is anyone else</p> <p>18 from Mr. Sells office on the line?</p> <p>19 MS. MILNER: I'm on the line,</p> <p>20 but not on the record.</p> <p>21 MR. MENKEN: I'm assuming</p> <p>22 Ms. Milner can reach out to her</p> <p>23 colleague and remind him that we are</p> <p>24 still on the record.</p> <p>25 MS. MILNER: I will.</p>	<p style="text-align: right;">243</p> <p>1 D. KEKANA</p> <p>2 indeed written in her own words as her -- and</p> <p>3 the tone of them, it's different as one is</p> <p>4 inprompted by questions and she is responding</p> <p>5 to specific questions. I would characterize</p> <p>6 those differences there.</p> <p>7 Q. That's it?</p> <p>8 MR. MELITO: Objection.</p> <p>9 A. (No Response.)</p> <p>10 Q. What about the substance; do you</p> <p>11 think the substance of both statements are</p> <p>12 the same?</p> <p>13 MR. MELITO: Objection. Again,</p> <p>14 this is -- to form and also I'll just</p> <p>15 have a standing objection that this</p> <p>16 line of questioning is outside the</p> <p>17 scope of the 30(b)(6). She is</p> <p>18 answering it in a personal capacity.</p> <p>19 A. And as much as I can answer from</p> <p>20 what I have viewed here, one goes into</p> <p>21 further details with regards to the exchange</p> <p>22 that she alleges and the reasons for the</p> <p>23 exchange and what motivated her on that day</p> <p>24 in May -- I forgot the date. I apologize.</p> <p>25 Q. May 16th, 2019.</p>
<p style="text-align: right;">242</p> <p>1 D. KEKANA</p> <p>2 MR. MENKEN: Thank you.</p> <p>3 MR. MELITO: If he is not back</p> <p>4 on the record in this deposition by</p> <p>5 5:35, we are considering this</p> <p>6 deposition closed. The time is now</p> <p>7 5:30.</p> <p>8 (5:31 Mr. Sells has returned to</p> <p>9 the video.)</p> <p>10 Q. So, you think the two statements are</p> <p>11 the same that Marilyn Barton gave relating to</p> <p>12 the May 16th 2019 incident; is that right,</p> <p>13 Ms. Kekana?</p> <p>14 MR. MENKEN: Objection.</p> <p>15 MR. MELITO: Objection.</p> <p>16 A. It's "Kekana"; and I don't think</p> <p>17 they are the same.</p> <p>18 Q. In what ways are do they differ?</p> <p>19 MR. MELITO: Objection. Again,</p> <p>20 this is outside the scope; and it is</p> <p>21 in her personal capacity.</p> <p>22 A. Inasmuch as I can speak to in my</p> <p>23 brief view of them here today; obviously, one</p> <p>24 is being transcribed and therefore may not be</p> <p>25 in her own words as much as what she has</p>	<p style="text-align: right;">244</p> <p>1 D. KEKANA</p> <p>2 MR. MELITO: Objection.</p> <p>3 Q. Right?</p> <p>4 MR. MELITO: Objection. She</p> <p>5 doesn't have the document in front of</p> <p>6 her.</p> <p>7 Q. Well, didn't the first statement</p> <p>8 that I read to you from Marilyn Barton say</p> <p>9 that it was Ms. Phillips who was the</p> <p>10 aggressor, that it was Ms. Phillips who</p> <p>11 bullied her?</p> <p>12 MR. MELITO: Objection.</p> <p>13 Q. -- didn't the first statement say</p> <p>14 that --</p> <p>15 MR. MELITO: Objection.</p> <p>16 Q. -- Ms. Kekana?</p> <p>17 MR. MELITO: Objection. And</p> <p>18 if, Ms. Kekana, if you would like to</p> <p>19 correct Mr. Sells again --</p> <p>20 MR. SELLS: You going to keep</p> <p>21 speaking, Nicholas? You going keep</p> <p>22 speaking?</p> <p>23 MR. MELITO: Are you going to</p> <p>24 keep harassing and disrespecting the</p> <p>25 witness?</p>

<p style="text-align: right;">245</p> <p>1 D. KEKANA</p> <p>2 MR. SELLS: All right, I get</p> <p>3 it. So that means you are going to</p> <p>4 continue speaking; is that correct?</p> <p>5 MR. MELITO: Derek --</p> <p>6 MR. SELLS: If you have to</p> <p>7 lodge an objection, just say it.</p> <p>8 MR. MELITO: Logically, yes,</p> <p>9 since you just said you're going to</p> <p>10 keep harassing the witness.</p> <p>11 Q. So, are you going to now make a</p> <p>12 referral to HR about Marilyn Barton lying</p> <p>13 during the course of an investigation; are</p> <p>14 you going to do that?</p> <p>15 MR. MELITO: Objection.</p> <p>16 Outside the scope, in her personal</p> <p>17 capacity. Objection to form and also</p> <p>18 object to the foundation of the</p> <p>19 documents that you are asking her</p> <p>20 about right now. She had no time to</p> <p>21 review them.</p> <p>22 A. With what I have learned in the</p> <p>23 brief time that I saw the documents here</p> <p>24 today for the first time, this would be</p> <p>25 something that I would review in a different</p>	<p style="text-align: right;">247</p> <p>1 D. KEKANA</p> <p>2 A. No.</p> <p>3 Q. Did you ever interview Umlta Alsop</p> <p>4 as part of the investigation?</p> <p>5 A. My office interviewed Umlta Alsop.</p> <p>6 Q. Okay.</p> <p>7 What do you recall her saying?</p> <p>8 A. I would have to look at her</p> <p>9 statement to recall the specifics of what she</p> <p>10 shared. She spoke to the general environment</p> <p>11 working in the outer office there. They were --</p> <p>12 Umlta, Marjorie, and Marilyn all work as</p> <p>13 administrative support in the dean's office.</p> <p>14 So she spoke to that experience. I can't</p> <p>15 recall more specifically what she stated</p> <p>16 without looking at her statement.</p> <p>17 MR. SELLS: Can we pull up</p> <p>18 Exhibit 21.</p> <p>19 (Whereupon, Plaintiff's Exhibit</p> <p>20 21, two-page document Bates stamped</p> <p>21 FIT136 and 137, was marked for</p> <p>22 identification as of this date.)</p> <p>23 (Counsel is sharing the</p> <p>24 computer screen image.)</p> <p>25 Q. Do you recognize this?</p>
<p style="text-align: right;">246</p> <p>1 D. KEKANA</p> <p>2 way than I would have reviewed in 2019.</p> <p>3 Q. And how would you have reviewed it?</p> <p>4 MR. MELITO: Objection.</p> <p>5 Q. How would you review it now knowing</p> <p>6 what you know?</p> <p>7 MR. MELITO: Objection.</p> <p>8 A. If I had the statement in which</p> <p>9 Ms. Barton stated this was retaliatory, I</p> <p>10 would have investigated it under the same</p> <p>11 investigation of discrimination.</p> <p>12 Q. According to you, under F.I.T.</p> <p>13 policy, because the investigations is already</p> <p>14 closed out you can't take new evidence and</p> <p>15 re-open the investigation; is that right?</p> <p>16 MR. MELITO: Objection.</p> <p>17 A. That is correct.</p> <p>18 Q. Now, as part of your investigation,</p> <p>19 was there an interview done of any witnesses</p> <p>20 concerning the incident of May 16th, 2019?</p> <p>21 A. My investigation of discrimination?</p> <p>22 Q. Yes. Did you or your office, the</p> <p>23 Affirmative Action Office, investigate</p> <p>24 anything having to do with the May 16th, 2019</p> <p>25 incident?</p>	<p style="text-align: right;">248</p> <p>1 D. KEKANA</p> <p>2 A. No, I do not.</p> <p>3 MR. SELLS: For the record,</p> <p>4 this is a document, a two-page</p> <p>5 document, Bates stamped FIT136 and</p> <p>6 137.</p> <p>7 Q. Have you seen this before?</p> <p>8 A. No, I have not.</p> <p>9 Q. Well, you see at the top of it it</p> <p>10 says, "Umlta Alsop." You see that, right?</p> <p>11 A. Yes.</p> <p>12 Q. Now, do you know whose writing this</p> <p>13 is?</p> <p>14 A. No, I do not.</p> <p>15 Q. Well, does it look like it's Umlta</p> <p>16 writing it in her own hand?</p> <p>17 MR. MELITO: Objection; form,</p> <p>18 foundation.</p> <p>19 Q. Just read the first paragraph, "On</p> <p>20 Thursday, May 16th, a student walked into the</p> <p>21 Graduate Study Office seeking a cap and gown.</p> <p>22 Marilyn, Marjorie and I were present as the</p> <p>23 student explained that she did not place an</p> <p>24 order for regalia, but wanted to know what</p> <p>25 her options were."</p>

<p style="text-align: right;">249</p> <p>1 D. KEKANA</p> <p>2 Do you see that?</p> <p>3 A. I see that, yes.</p> <p>4 Q. Okay.</p> <p>5 Is it your understanding that back</p> <p>6 on May 16th, 2019 that Marilyn Barton,</p> <p>7 Ms. Phillips and Umlita Alsop were in the</p> <p>8 same office?</p> <p>9 A. Yes.</p> <p>10 MR. MELITO: Objection.</p> <p>11 Q. And from this, do you get that with</p> <p>12 "Umlita Alsop" at the top that this is her</p> <p>13 statement?</p> <p>14 MR. MELITO: Objection.</p> <p>15 A. I'm getting that from having the</p> <p>16 writing of "Umlita," but there are other</p> <p>17 people who work in the Graduate Study Office</p> <p>18 or who could have been present there. I</p> <p>19 don't know 'cause I don't know who authored</p> <p>20 this document.</p> <p>21 Q. Got it.</p> <p>22 So you don't know that this is</p> <p>23 Umlita Alsop; is that right?</p> <p>24 MR. MELITO: Objection.</p> <p>25 A. I don't know.</p>	<p style="text-align: right;">251</p> <p>1 D. KEKANA</p> <p>2 Q. Now, how is it that F.I.T. has such</p> <p>3 policies in existence whereby when</p> <p>4 investigations of discrimination and</p> <p>5 retaliation are conducted that you cannot</p> <p>6 even make out who is the one writing a</p> <p>7 statement; how is it?</p> <p>8 MR. MELITO: Objection; form.</p> <p>9 A. I'm not certain if this is involving</p> <p>10 a complaint of discrimination. Each office --</p> <p>11 so the Human Resources Office or the</p> <p>12 Affirmative Action Office has their own</p> <p>13 processes that govern the policies that they</p> <p>14 effect and their own practices in which -- in</p> <p>15 the manner in which they take statements.</p> <p>16 Q. Well, you understand that you're a</p> <p>17 30(b)(6) Witness for all of F.I.T.; and so,</p> <p>18 is it your testimony on behalf of F.I.T. that</p> <p>19 the HR Department has a different</p> <p>20 investigatory process than the Affirmative</p> <p>21 Action Office --</p> <p>22 MR. MELITO: Objection.</p> <p>23 Q. -- as it relates to complaints of</p> <p>24 discrimination and retaliation?</p> <p>25 MR. MELITO: Objection.</p>
<p style="text-align: right;">250</p> <p>1 D. KEKANA</p> <p>2 Q. Got it. Let's keep going.</p> <p>3 "Marjorie told her that she should</p> <p>4 go to the book store and speak with Carla."</p> <p>5 This is a first person account, a</p> <p>6 witness account of what occurred on May 16th;</p> <p>7 would you agree with me than?</p> <p>8 MR. MELITO: Objection; form,</p> <p>9 calls for legal conclusion and again</p> <p>10 outside the scope of the 30(b)(6).</p> <p>11 In her personal capacity, she can</p> <p>12 answer.</p> <p>13 A. In my opinion, that is what it</p> <p>14 appears to be.</p> <p>15 Q. Okay.</p> <p>16 But according to you, and this gets</p> <p>17 back to the whole investigatory process that</p> <p>18 F.I.T. uses -- that they'll investigate</p> <p>19 matters of discriminatory or complaints of</p> <p>20 discrimination and retaliation -- you cannot</p> <p>21 even look at it. As the head affirmative</p> <p>22 action director, you cannot a even tell who</p> <p>23 this statement comes from, right?</p> <p>24 MR. MELITO: Objection.</p> <p>25 A. That is correct.</p>	<p style="text-align: right;">252</p> <p>1 D. KEKANA</p> <p>2 Outside the scope of 30(b)(6).</p> <p>3 A. I'm answering that question as in my</p> <p>4 own personal capacity that different offices</p> <p>5 have different practices in the way that they</p> <p>6 process and work through the policies that</p> <p>7 they govern.</p> <p>8 Q. So, you're saying that you are not</p> <p>9 the appropriate 30(b)(6) Witness to talk</p> <p>10 about F.I.T.'s policies as they relate to</p> <p>11 investigation of discrimination and</p> <p>12 retaliation by the HR Department --</p> <p>13 MR. MELITO: Objection --</p> <p>14 Q. -- is that right?</p> <p>15 MR. MELITO: Objection. That</p> <p>16 wasn't even noticed in the</p> <p>17 deposition, and it calls for a legal</p> <p>18 conclusion; and objection to form,</p> <p>19 outside the scope of the 30(b)(6).</p> <p>20 Q. You can answer the question.</p> <p>21 A. I'm not sure of what the definition</p> <p>22 of 30(b)(6) entails.</p> <p>23 Q. That is not part of question.</p> <p>24 MR. MELITO: Yes it is.</p> <p>25 MR. SELLS: Read back the</p>

<p style="text-align: right;">253</p> <p>1 D. KEKANA</p> <p>2 question.</p> <p>3 (Whereupon, the requested</p> <p>4 portion of the transcript was read</p> <p>5 back.)</p> <p>6 MR. SELLS: Let me withdraw the</p> <p>7 question. And I'll ask ---</p> <p>8 Q. Are you the appropriate witness to</p> <p>9 testify about F.I.T.'s HR Department's</p> <p>10 investigatory practices as they relate to</p> <p>11 complaints of discrimination and retaliation?</p> <p>12 MR. MELITO: Objection.</p> <p>13 Again, calls for legal</p> <p>14 conclusion, objection to form.</p> <p>15 A. I am --- I would not be the person</p> <p>16 who can speak to how HR investigates. I can</p> <p>17 speak to how affirmative action and Title 9</p> <p>18 investigations take place.</p> <p>19 Q. Got it.</p> <p>20 So, in order for us to better</p> <p>21 understand how HR investigated the complaint</p> <p>22 involving the May 16th, 2019 incident between</p> <p>23 Ms. Phillips and Ms. Barton, we would have to</p> <p>24 speak to someone from HR; is that correct?</p> <p>25 MR. MELITO: Objection. Same</p>	<p style="text-align: right;">255</p> <p>1 D. KEKANA</p> <p>2 students and not all."</p> <p>3 "Marilyn then said that she didn't</p> <p>4 care what Marjorie thought. That she had</p> <p>5 made an executive decision and that Marjorie</p> <p>6 should talk to the dean if she had a problem</p> <p>7 with her choice."</p> <p>8 A. Yes.</p> <p>9 Q. Got it.</p> <p>10 Now, do you know that student? The</p> <p>11 one that Marilyn Barton decided to give a cap</p> <p>12 and gown to, do you know what color that</p> <p>13 student was? What race that student ---</p> <p>14 MR. MELITO: Objection ---</p> <p>15 Q. -- was?</p> <p>16 MR. MELITO: Objection.</p> <p>17 A. No.</p> <p>18 Q. Would you agree that this could</p> <p>19 possibly be preferential treatment where one</p> <p>20 student is getting a gown from Marilyn Barton</p> <p>21 and yet no other student would get one; would</p> <p>22 you agree that that is preferential</p> <p>23 treatment?</p> <p>24 MR. MELITO: Objection and</p> <p>25 outside the scope to 30(b)(6), to</p>
<p style="text-align: right;">254</p> <p>1 D. KEKANA</p> <p>2 objection; form, legal conclusion.</p> <p>3 In your personal capacity, go ahead.</p> <p>4 A. In my personal capacity, I would say</p> <p>5 that, yes, you would need to speak with</p> <p>6 someone from HR.</p> <p>7 Q. Okay.</p> <p>8 MR. MELITO: And again, Mr. Sells ---</p> <p>9 Q. Let's keep going. We're going to</p> <p>10 keep going now.</p> <p>11 MR. SELLS: Let's go down to --</p> <p>12 I'll read this paragraph.</p> <p>13 Q. "When Marlin came back into the</p> <p>14 office, Marjorie asked why the student was</p> <p>15 given the cap and gown when she did not</p> <p>16 follow proper procedure to order and pay for</p> <p>17 the items. Marilyn explained that she was</p> <p>18 trying to be nice to the student."</p> <p>19 "I then asked how we should handle</p> <p>20 it if another student comes in with a similar</p> <p>21 situation. Marilyn said other students would</p> <p>22 not get a cap and gown. And I said, okay.</p> <p>23 Marjorie said that she believed all students</p> <p>24 should follow the proper procedure and that</p> <p>25 it is not fair for us to accommodate some</p>	<p style="text-align: right;">256</p> <p>1 D. KEKANA</p> <p>2 form and to legal conclusion.</p> <p>3 A. Personally, I cannot say if that is</p> <p>4 preferential. I don't know if in the office</p> <p>5 they would give out all the leftovers until</p> <p>6 there were no more or if it was just this one</p> <p>7 student; I don't know.</p> <p>8 Q. Okay.</p> <p>9 But you understand that</p> <p>10 discrimination means in part that someone is</p> <p>11 getting treated better than someone else</p> <p>12 based on an improper motive; you understand</p> <p>13 that, right?</p> <p>14 MR. MELITO: Objection.</p> <p>15 MR. DRANOFF: I'll object to</p> <p>16 the form ---</p> <p>17 MR. MELITO: Objection to form,</p> <p>18 legal conclusion. Again, outside the</p> <p>19 scope of the 30(b)(6).</p> <p>20 A. I would not characterize</p> <p>21 discrimination that way. "Discrimination" is</p> <p>22 treating someone due to their belonging to a</p> <p>23 protected characteristic.</p> <p>24 Q. Okay.</p> <p>25 But the point is that if someone is</p>

<p style="text-align: right;">257</p> <p>1 D. KEKANA</p> <p>2 going to accuse another of preferential</p> <p>3 treatment, that that could be considered a</p> <p>4 complaint of discrimination; you understand</p> <p>5 that, right?</p> <p>6 MR. MELITO: Objection.</p> <p>7 A. I understand someone could complain</p> <p>8 of discrimination if they see preferential</p> <p>9 treatment.</p> <p>10 Q. Then according to this witness</p> <p>11 statement, it says, "Marjorie said she would</p> <p>12 speak to Mary, the dean, but she was</p> <p>13 expressing her opinion since we were</p> <p>14 discussing the situation. Marilyn then</p> <p>15 reiterated that she didn't care about</p> <p>16 Marjorie's opinion and added that she was</p> <p>17 tired of this shit."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And when you look at that in the</p> <p>21 context of Ms. Phillips complaining to</p> <p>22 Marilyn Barton that Marilyn Barton was</p> <p>23 exhibiting preferential treatment, then here</p> <p>24 we go again, right; retaliation --</p> <p>25 MR. MELITO: Objection --</p>	<p style="text-align: right;">259</p> <p>1 D. KEKANA</p> <p>2 with regards to the discussion between</p> <p>3 Marilyn and -- I heard -- I read here that</p> <p>4 Marilyn said she didn't care about what</p> <p>5 Marjorie thought and goes on to say that she</p> <p>6 is tired of this shit.</p> <p>7 Q. And then goes on right, "Shut the</p> <p>8 fuck up. I will fuck you up."</p> <p>9 MR. MELITO: Objection. Again,</p> <p>10 this is outside the scope of the</p> <p>11 30(b)(6); and you also, I believe,</p> <p>12 noticed this witness who can speak</p> <p>13 more to it. You noticed Umlita for a</p> <p>14 deposition.</p> <p>15 Q. Can you answer the question, please?</p> <p>16 A. What is the question?</p> <p>17 MR. SELLS: Okay. I'll</p> <p>18 withdraw the question and ask this</p> <p>19 one.</p> <p>20 Q. "Marilyn then, in what I would</p> <p>21 describe as an aggressive manner, left her</p> <p>22 desk area and walked over to Marjorie's while</p> <p>23 screaming, 'I will fuck you up. I will</p> <p>24 fucking kill you.'"</p> <p>25 "At this point she was within inches</p>
<p style="text-align: right;">258</p> <p>1 D. KEKANA</p> <p>2 Q. -- I'm tired of this shit that you</p> <p>3 keep complaining about me being racist --</p> <p>4 MR. MELITO: Objection --</p> <p>5 Q. -- right; isn't that --</p> <p>6 MR. MELITO: Argumentative --</p> <p>7 Q. -- says to you?</p> <p>8 MR. MELITO: Objection.</p> <p>9 Argumentative. You're testifying</p> <p>10 about this document and</p> <p>11 mischaracterizing what it says.</p> <p>12 Q. You can answer the question.</p> <p>13 A. What I see this document says is it</p> <p>14 says that she was "tired of this shit."</p> <p>15 Q. Right, and it came into context of</p> <p>16 Ms. Phillips saying that Ms. Barton was</p> <p>17 getting preferential treatment, right?</p> <p>18 MR. MELITO: Objection. Again,</p> <p>19 you're testifying as to what Marjorie</p> <p>20 is saying. You're assuming facts not</p> <p>21 in evidence. I mean, just -- I am</p> <p>22 objecting to the whole line of</p> <p>23 questioning, but go ahead. Go ahead</p> <p>24 with your improper question.</p> <p>25 A. As I see this document, this is in</p>	<p style="text-align: right;">260</p> <p>1 D. KEKANA</p> <p>2 of Marjorie. Marilyn was standing over</p> <p>3 Marjorie's desk with literal spit/foam coming</p> <p>4 from her mouth as she repeated this threat</p> <p>5 over and over."</p> <p>6 Now let me ask you this question:</p> <p>7 If an employee who was trying to do their</p> <p>8 work had another employee approach them, get</p> <p>9 within inches of them, have literal spit and</p> <p>10 foam coming from their mouth and yells "I</p> <p>11 will fuck you up. I will fucking kill you.</p> <p>12 I'm tired of your shit, shut the fuck up. I</p> <p>13 will fuck you up." Would that, in your</p> <p>14 opinion, negatively affect a person's ability</p> <p>15 to do their job?</p> <p>16 MR. MELITO: Objection.</p> <p>17 Outside the scope of the 30(b)(6),</p> <p>18 objection to the form, legal</p> <p>19 conclusion, also out of context about</p> <p>20 the whole situation that you are</p> <p>21 testifying about and what this</p> <p>22 document says.</p> <p>23 A. I can't say what is going to make</p> <p>24 someone be able to do their job and what is</p> <p>25 going to make someone else be able to do</p>

<p style="text-align: right;">261</p> <p>1 D. KEKANA</p> <p>2 their job. I can say that if someone feels</p> <p>3 threatened that they should leave the space,</p> <p>4 leave the room and seek safety.</p> <p>5 Q. Wait a minute. Wait a minute. You</p> <p>6 just said that you don't know -- or I should</p> <p>7 say you can't say.</p> <p>8 You can't say whether or not someone</p> <p>9 who -- an employee who gets up from their</p> <p>10 desk, walks over to another employee, gets in</p> <p>11 their face with foam and spit coming from</p> <p>12 their mouth and starts yelling at them "I</p> <p>13 will fucking kill you. Shut the fuck up."</p> <p>14 You can't say whether that would negatively</p> <p>15 effect their ability to do their job; is that</p> <p>16 what I heard you say?</p> <p>17 MR. MELITO: Objection.</p> <p>18 Outside the scope of 30(b) (6).</p> <p>19 Objection to form, calls for</p> <p>20 speculation amongst other form</p> <p>21 objections.</p> <p>22 A. What I'm saying is I can't suppose</p> <p>23 what is in the hearts and minds of how people</p> <p>24 would react to different situations.</p> <p>25 Q. That's not my question. You're</p>	<p style="text-align: right;">263</p> <p>1 D. KEKANA</p> <p>2 don't need to say "objection" anymore</p> <p>3 today --</p> <p>4 MR. MELITO: Okay. So let's --</p> <p>5 MR. SELLS: So now -- so now --</p> <p>6 so now --</p> <p>7 MR. MELITO: We cannot --</p> <p>8 Q. If you could answer my question?</p> <p>9 MR. MELITO: We cannot move on</p> <p>10 with that statement.</p> <p>11 MR. SELLS: I'm taking another</p> <p>12 five-minute break.</p> <p>13 MR. MELITO: No.</p> <p>14 MR. SELLS: Nicholas, I can't</p> <p>15 deal with this.</p> <p>16 MR. MELITO: No, I need</p> <p>17 clarification as far as what you said</p> <p>18 with regard to the rules of the</p> <p>19 depositions.</p> <p>20 (Mr. Sells has turned off his</p> <p>21 camera and microphone and exited the</p> <p>22 deposition.)</p> <p>23 MR. MELITO: Please note for</p> <p>24 the record Mr. Sells turned off</p> <p>25 camera, abruptly left while we were</p>
<p style="text-align: right;">262</p> <p>1 D. KEKANA</p> <p>2 saying that an employee's job would not be</p> <p>3 affected, but you can't say whether a</p> <p>4 person's ability do their job would be</p> <p>5 affected by this kind of conduct --</p> <p>6 MR. MELITO: Objection --</p> <p>7 Q. -- is that what you're saying?</p> <p>8 MR. MELITO: Objection to form.</p> <p>9 Objection, outside the form of the</p> <p>10 30(b) (6).</p> <p>11 MR. SELLS: Listen, are you</p> <p>12 going to take up 30 seconds every</p> <p>13 single time I ask a question?</p> <p>14 Seriously?</p> <p>15 MR. MELITO: Ask proper</p> <p>16 questions, or yes.</p> <p>17 MR. SELLS: You're just eating</p> <p>18 time, Nicholas.</p> <p>19 MR. MELITO: I'm not eating</p> <p>20 time.</p> <p>21 MR. SELLS: I tell you what,</p> <p>22 you have an objection to every</p> <p>23 question I ask, all right. Every</p> <p>24 question. Whatever objection you</p> <p>25 could imagine, you have it. So you</p>	<p style="text-align: right;">264</p> <p>1 D. KEKANA</p> <p>2 in the middle of a conversation</p> <p>3 regarding what we, I guess, objected</p> <p>4 to.</p> <p>5 The time is 6:01 and we are</p> <p>6 still on the record. And again out</p> <p>7 of a courtesy, I will give him until</p> <p>8 6:05 unless this deposition is</p> <p>9 closed.</p> <p>10 MR. MENKEN: I might add his</p> <p>11 departure, just like the first</p> <p>12 occasion, on this second occasion, is</p> <p>13 because he raised his temper and</p> <p>14 raised his voice once again.</p> <p>15 (Mr. Sells has returned to</p> <p>16 video.)</p> <p>17 MR. SELLS: You ready to go</p> <p>18 forward?</p> <p>19 MR. MELITO: If you are.</p> <p>20 You're the one that left.</p> <p>21 MR. SELLS: I'm ready.</p> <p>22 Q. So, Ms. Kekana, with someone yelling</p> <p>23 in the fashion that has been described in</p> <p>24 this statement, the same way that Marilyn</p> <p>25 Barton yelled and screamed at Ms. Phillips,</p>